No. 18-485

IN THE
Supreme Court of the United States

EDWARD G. MCDONOUGH,
Petitioner,

v.

YOUEL SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER, NEW YORK, AKA TREY SMITH,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

NEAL KUMAR KATYAL
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
neal.katyal@hoganlovells.com

Counsel of Record
for Petitioner

THOMAS JAMES O'CONNOR
NAPIERSKI, VANDENBURGH, NAPIERSKI & O'CONNOR, LLP
296 Washington Avenue Extension, Suite 3
Albany, NY 12203
(518) 862-9292
toc@nvnolaw.com

Counsel of Record
for Respondent

PETITION FOR WRIT OF CERTIORARI FILED: OCTOBER 12, 2018
CERTIORARI GRANTED: JANUARY 11, 2019

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 17-296

EDWARD G. MCDONOUGH,

Plaintiff-Appellant,

v.

YOUEL SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER, NEW YORK, AKA TREY SMITH,

Defendant-Appellee.

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
01/30/2017	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Edward G. McDonough, FILED. [1958541] [17-296] [Entered: 01/31/2017 11:06 AM]
		* * *
03/23/2017	29	BRIEF, on behalf of Appellant Edward G.

DATE	DOCKET NUMBER	PROCEEDINGS
		McDonough, FILED. Service date 03/23/2017 by CM/ECF, US mail.[1996401] [17-296] [Entered: 03/23/2017 03:47 PM]
		* * *
04/20/2017	37	MOTION FOR LEAVE TO INTERVENE, on behalf of Defendant John J. Ogden, FILED. Service date04/20/2017 by CM/ECF.[2016196] [17-296] [Entered: 04/20/2017 05:24 PM]
		* * *
04/24/2017	41	MOTION ORDER, granting Defendant John J. Ogden's motion to intervene [37]. Beginning 30 days after the date of this order and continuing in 30-day intervals thereafter, Plaintiff-Appellant shall inform this Court in writing of the status of the Rule 54(b) motion. All appellees' briefs are due

DATE	DOCKET NUMBER	PROCEEDINGS
		35 days from the entry of an order granting the Rule 54(b) motion, by RJL, FILED. [2017633][41] [17-296] [Entered: 04/24/2017 10:51 AM]
		* * *
08/30/2017	69	BRIEF, on behalf of Appellee Youel Smith, FILED. Service date 08/30/2017 by CM/ECF. [2114051] [17-296] [Entered: 08/30/2017 04:03 PM]
08/31/2017	70	BRIEF, on behalf of Appellee John J. Ogden, FILED. Service date 08/31/2017 by CM/ECF. [2114399] [17-296] [Entered: 08/31/2017 09:24 AM]
		* * *
09/14/2017	79	REPLY BRIEF, on behalf of Appellant Edward G. McDonough, FILED. Service date 09/14/2017 by CM/ECF, US mail.

DATE	DOCKET NUMBER	PROCEEDINGS
		[2124530] [17-296] [Entered: 09/14/2017 12:23 PM]
		* * *
08/03/2018	94	OPINION, affirming the district court judgment, by DJ, RR, CFD, FILED.[2358554] [17-296] [Entered: 08/03/2018 09:10 AM]
		* * *
08/03/2018	100	JUDGMENT, FILED.[2358697] [17-296] [Entered: 08/03/2018 10:43 AM]
		* * *
08/17/2018	103	PETITION FOR REHEARING/REHEARING EN BANC, on behalf of Appellant Edward G. McDonough, FILED. Service date 08/17/2018 by CM/ECF.[2370813] [17-296] [Entered: 08/17/2018 03:40 PM]
		* * *

DATE	DOCKET NUMBER	PROCEEDINGS
08/30/2018	133	AMICUS BRIEF, on behalf of Amicus Curiae American Civil Liberties Union, Bronx Defenders, Brooklyn Defender Services, Center for Appellate Litigation, Connecticut Innocence Project, National Association of Criminal Defense Lawyers, Neighborhood Defender Service of Harlem, New York County Defender Services, New York State Association of Criminal Defense Lawyers, Office of the Appellate Defender, The Innocence Project, The Legal Aid Society and Vermont Office of the Defender General, FILED. Service date 08/30/2018 by CM/ECF.[2379447] [17-296] [Entered: 08/30/2018 03:24 PM]
		* * *
09/12/2018	136	ORDER, petition for rehearing en banc denied,

DATE	DOCKET NUMBER	PROCEEDINGS
		FILED.[2387882] [17-296] [Entered: 09/12/2018 02:58 PM]
09/19/2018	137	JUDGMENT MANDATE, ISSUED.[2392851] [17-296] [Entered: 09/19/2018 03:39 PM]
		* * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Docket No. 1:15-cv-01515-MAD-DJS

EDWARD G. MCDONOUGH,

Plaintiff,

v.

YOUEL C. SMITH, III, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER, NEW YORK, AKA TREY SMITH,

Defendant.

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
12/18/2015	1	COMPLAINT against All Defendants (Filing fee $400 receipt number 0206-3519743) filed by Edward G. McDonough. (Attachments: # 1 Exhibits A-K; # 2 Civil Cover Sheet)(lah) (Entered: 12/22/2015)
		* * *
02/05/2016	12	First MOTION to Dismiss for Failure to State a Claim Motion Hearing set

DATE	DOCKET NUMBER	PROCEEDINGS
		for 3/15/2016 10:00 AM in Albany before U.S. District Judge Mae A. D'Agostino Response to Motion due by 2/29/2016 Reply to Response to Motion due by 3/4/2016. filed by William A. McInerney. (Attachments: # 1 Affidavit, # 2 Memorandum of Law, # 3 Affirmation of ECF service) (Long, James) (Entered: 02/05/2016)
		* * *
02/29/2016	36	RESPONSE in Opposition re 12 First MOTION to Dismiss for Failure to State a Claim filed by Edward G. McDonough. (Attachments: # 1 Exhibit(s))(Premo, Brian) (Entered: 02/29/2016)
		* * *
03/03/2016	40	MOTION to Dismiss , MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 4/5/2016 10:00 AM in

DATE	DOCKET NUMBER	PROCEEDINGS
		Albany before U.S. District Judge Mae A. D'Agostino Response to Motion due by 3/21/2016 Reply to Response to Motion due by 3/25/2016. filed by Daniel B. Brown, John F. Brown. (Attachments: # 1 Affidavit of John F. Brown, # 2 Affidavit of Daniel B. Brown, # 3 Memorandum of Law, # 4 Certificate of Service) (Steck, Phillip) (Additional attachment(s) added on 3/14/2016: # 5 Exhibit(s) A-C of John Brown Affidavit, # 6 Exhibit(s) A - F of Dan Brown Affidavit, # 7 Application for Search Warrant, # 8 Affidavit in Support of Application for Search Warrant) (ban,). (Additional attachment(s) added on 3/14/2016: # 9 Volume 1, # 10 Volume 1 part 2, # 11 Volume 1 part 3, # 12 Volume 2 part 1, # 13 Volume 2 part 2, # 14

DATE	DOCKET NUMBER	PROCEEDINGS
		Volume 2 part 3, # 15 Volume 3 part 1, # 16 Volume 3 part 2, # 17 Volume 3 part 3) (ban,). (Entered: 03/03/2016)
		* * *
03/21/2016	60	RESPONSE to Motion re 45 Letter Motion from Phillip G. Steck, Esq. for Daniel B. Brown, John F. Brown requesting Permission to file Exhibits submitted to Judge Mae A. D'Agostino filed by Edward G. McDonough. (Attachments: # 1 Exhibit(s), # 2 Supplement Addendum)(Premo, Brian) (Entered: 03/21/2016)
		* * *
04/01/2016	67	REPLY to Response to Motion re 40 MOTION to Dismiss MOTION to Dismiss for Failure to State a Claim filed by Daniel B. Brown, John F.

DATE	DOCKET NUMBER	PROCEEDINGS
		Brown. (Attachments: # 1 Certificate of Service)(Steck, Phillip) (Entered: 04/01/2016)
		* * *
04/11/2016	73	MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 5/17/2016 10:00 AM in Albany before U.S. District Judge Mae A. D'Agostino Response to Motion due by 5/2/2016 Reply to Response to Motion due by 5/6/2016. filed by John J. Ogden. (Attachments: # 1 Affirmation in Support, # 2 Memorandum of Law, # 3 Declaration of Service, # 4 Declaration of Service) (Scott, William) (Entered: 04/11/2016)
		* * *
05/02/2016	86	RESPONSE in Opposition re 73 MOTION to Dismiss for Failure to State a Claim *Ogden* filed by Edward G. McDonough.

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Exhibit(s)) (Premo, Brian) (Entered: 05/02/2016)
		* * *
05/05/2016	88	REPLY to Response to Motion re 73 MOTION to Dismiss for Failure to State a Claim filed by John J. Ogden. (Attachments: # 1 Declaration of Service) (Scott, William) (Entered: 05/05/2016)
		* * *
07/13/2016	96	MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 8/16/2016 09:30 AM in Albany before U.S. District Judge Mae A. D'Agostino Response to Motion due by 8/1/2016 Reply to Response to Motion due by 8/5/2016. filed by Youel C. Smith, III. (Attachments: # 1 Affidavit Affidavit of Youel C. Smith, III in

DATE	DOCKET NUMBER	PROCEEDINGS
		Support of Motion to Dismiss, # 2 Memorandum of Law, # 3 Certificate of Service) (O'Connor, Thomas) (Entered: 07/13/2016)
		* * *
07/14/2016	99	AFFIDAVIT re 96 MOTION to Dismiss for Failure to State a Claim by Youel C. Smith, III. (Attachments: # 1 Exhibit(s) 1 - Order to Show Cause and Temporary Restraining Order, Petition and Exhibits "A" through "D" and supporting affidavit of Mirch, # 2 Exhibit(s) 2 - DA McNally's letter application, # 3 Exhibit(s) 3 - Order, # 4 Exhibit(s) 4 - Annual Order 2009 Third Judicial District, # 5 Exhibit(s) 5 - 9.29.09 Consent and Teal Evidence Receipt, # 6 Exhibit(s) 6 - 10.6.09 Teal Evidence Receipt, # 7 Exhibit(s) 7 - 10.1.09

DATE	DOCKET NUMBER	PROCEEDINGS
		Lambertsen Transcript, # 8 Exhibit(s) 8 - 10.2.09 Lynch Decision and Order, # 9 Exhibit(s) 9 - 10.15.09 Evidence Receipt, # 10 Exhibit(s) 10 - 10.17.09 Karen Gushlaw Affidavit, # 11 Exhibit(s) 11 - 10.17.09 Richard Gushlaw Affidavir, # 12 Exhibit(s) 12 - 9.23.09 Sanchez Affidavit, # 13 Exhibit(s) 13 - 10.22.09 Couch Supporting Deposition, # 14 Exhibit(s) 14 - 10.15.09 Couch Envelopes, # 15 Exhibit(s) 15 - 10.30.09 Karen Gushlow Supporting Deposition, # 16 Exhibit(s) 16 - 10.30.09 Richard Gushlaw Supporting Deposition, # 17 Exhibit(s) 17 - 11.6.09 Sanchez Supporting Deposition, # 18 Exhibit(s) 18 - 11.6.09 Madera Supporting Deposition, # 19 Exhibit(s) 19 - 9.23.09 Madera Affidavit, # 20

DATE	DOCKET NUMBER	PROCEEDINGS
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DATE	DOCKET NUMBER	PROCEEDINGS
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DATE	DOCKET NUMBER	PROCEEDINGS
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DATE	DOCKET NUMBER	PROCEEDINGS
		Exhibit(s) 80 - 3.30.12 Pulver D&O, # 81 Exhibit(s) 81 - Criminal Statutes)(O'Connor, Thomas) (Entered: 07/14/2016)
		* * *
09/19/2016	108	RESPONSE in Opposition re 96 MOTION to Dismiss for Failure to State a Claim , 97 MOTION to Dismiss for Failure to State a Claim *to Memorandum of Law and Supporting Attorney Declaration Dkt. 95* , filed by Edward G. McDonough. (Attachments: # 1 Exhibit(s), # 2 Exhibit(s), # 3 Exhibit(s)) (Premo, Brian) (Entered: 09/19/2016)
		* * *
09/26/2016	110	REPLY to Response to Motion re 96 MOTION to Dismiss for Failure to State a Claim filed by Youel C. Smith, III.

DATE	DOCKET NUMBER	PROCEEDINGS
		(O'Connor, Thomas) (Entered: 09/26/2016)
09/26/2016	111	REPLY to Response to Motion re 96 MOTION to Dismiss for Failure to State a Claim *Reply Affidavit of Youel C. Smith* filed by Youel C. Smith, III. (O'Connor, Thomas) (Entered: 09/26/2016)
		* * *
09/26/2016	113	AFFIDAVIT re 111 Reply to Response to Motion by Youel C. Smith, III. (Attachments: # 1 Exhibit(s) 1- Ogden Warrant Affidavit, # 2 Exhibit(s) 2- Lagace supporting deposition, # 3 Exhibit(s) 3- Gonzalez supporting deposition, # 4 Exhibit(s) 4- Welch affidavit, # 5 Exhibit(s) 5- Yando supporting deposition, # 6 Exhibit(s) 6 - Known & Questioned Yando Signatures, # 7 Exhibit(s) 7- GJ

DATE	DOCKET NUMBER	PROCEEDINGS
		Instructions Excerpt, # 8 Exhibit(s) 8- Brown Transcript, # 9 Exhibit(s) 9- NYSP Note Re Daniel, # 10 Exhibit(s) 10- Times Union Article re Daniel, # 11 Exhibit(s) 11- Brown GJ Transcript, # 12 Exhibit (s) 12- DiFabio Supporting deposition, # 13 Exhibit(s) 13- Tangredi Supporting deposition, # 14 Exhibit(s) 14- DiFabio Ballot Envelope, # 15 Exhibit(s) 15- Tangredi Ballot Envelope, # 16 Exhibit(s) 16- Brown Statement, # 17 Exhibit(s) 17- Dickinson supporting deposition, # 18 Exhibit(s) 18- Taylor supporting deposition, # 19 Exhibit(s) 19- Gilbert supporting deposition, # 20 Exhibit(s) 20- Carpenter supporting deposition, # 21 Exhibit(s) 21- Newell supporting deposition, # 22 Exhibit(s) 22- Wiley Supporting deposition, # 23 Exhibit(s) 23- 3.12.10 McGrath

DATE	DOCKET NUMBER	PROCEEDINGS
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09/30/2016	114	MEMORANDUM-DECISION AND ORDER:

DATE	DOCKET NUMBER	PROCEEDINGS
		The Court ORDERS that Defendant McInerney's motion to dismiss (Dkt. No. 12) is GRANTED in part and DENIED in part as stated herein; and the Court further ORDERS that Defendants John and Daniel Brown's motion to dismiss (Dkt. No. 40) is GRANTED in its entirety; and the Court further ORDERS that Defendant O'Malley's motion to dismiss (Dkt. No. 50) is GRANTED in its entirety; and the Court further ORDERS that Defendant Robillard's motion to dismiss (Dkt. No. 56) is GRANTED in its entirety; and the Court further ORDERS that Defendant McNally's motion to dismiss (Dkt. No. 64) is GRANTED in its entirety; and the Court further ORDERS that Plaintiff's fabrication of evidence claims are DISMISSED as against all Defendants

DATE	DOCKET NUMBER	PROCEEDINGS
		on statute of limitations grounds; and the Court further ORDERS that Defendants John and Daniel Brown, O'Malley, Robillard, and McNally are terminated from this action; and the Court further ORDERS that the Clerk of the Court shall serve a copy of this Memorandum- Decision and Order on all parties in accordance with the Local Rules. Signed by U.S. District Judge Mae A. D'Agostino on 9/30/2016. (ban) (Additional attachment(s) added on 10/7/2016: # 1 Returned Receipt) (jzm,). (Entered: 09/30/2016)
		* * *
12/30/2016	121	MEMORANDUM-DECISION AND ORDER: The Court hereby ORDERS that Defendant Smith's motion to dismiss (Dkt. No. 96) is GRANTED in its entirety;

DATE	DOCKET NUMBER	PROCEEDINGS
		and the Court further ORDERS that Defendant Ogden's motion to dismiss (Dkt. No. 73) is GRANTED in part and DENIED in part as stated herein; and the Court further ORDERS that Defendant County of Rensselaer's motion to dismiss (Dkt. No. 97) is GRANTED in its entirety; and the Court further ORDERS that Defendants Smith and the County of Rensselaer are terminated from this action; and the Court further ORDERS that Defendants John and Daniel Brown's motion for sanctions (Dkt. No. 89) is DENIED; and the Court further ORDERS that Plaintiff's cross-motion for sanctions (Dkt. No. 90) is DENIED; and the Court further ORDERS that the Clerk of the Court shall serve a copy of this Memorandum-Decision

DATE	DOCKET NUMBER	PROCEEDINGS
		and Order on all parties in accordance with the Local Rules. Signed by U.S. District Judge Mae A. D'Agostino on 12/30/2016. (ban) (Entered: 12/30/2016)
		* * *
01/27/2017	124	NOTICE OF APPEAL by Edward G. McDonough. Filing fee $ 505, receipt number 0206-3913261. (Premo, Brian) (Entered: 01/27/2017)
		* * *
02/17/2017	131	First MOTION for Entry of Judgment under Rule 54(b) Motion Hearing set for 3/21/2017 10:00 AM in Albany before U.S. District Judge Mae A. D'Agostino Response to Motion due by 3/6/2017 Reply to Response to Motion due by 3/10/2017. filed by Edward G. McDonough. (Attachments: # 1 Memorandum of Law, # 2

DATE	DOCKET NUMBER	PROCEEDINGS
		Affirmation) (Premo, Brian) (Entered: 02/17/2017)
		* * *
03/02/2017	135	TEXT ORDER: On February 27, 2017, Defendant John Ogden filed a Letter Request, with the consent of all parties except for pro se Defendant Anthony Renna, seeking a stay of discovery in this matter pending the resolution of Plaintiff's appeal. Dkt. No. 134 . Based upon the reasons set forth in Defendant Ogden's submission, the request is GRANTED and discovery is STAYED. The Rule 16 Initial Conference currently scheduled for March 9, 2017 and the deadline to file a proposed Civil Case Management Plan and exchange Mandatory Disclosures are ADJOURNED without date at this time.

DATE	DOCKET NUMBER	PROCEEDINGS
		Plaintiff's counsel is directed to file a Status Report May 1, 2017. SO ORDERED by Magistrate Judge Daniel J. Stewart on 3/2/2017. (mab) (Entered: 03/02/2017)
		* * *
05/08/2017	142	MEMORANDUM-DECISION AND ORDER granting 131 Motion for Entry of Judgment under Rule 54(b); granting 133 Letter Request: The Court hereby ORDERS that Plaintiff's motion for entry of a final judgment (Dkt. No. 131), joined byDefendant Smith (Dkt. No. 133), is GRANTED; and the Court further ORDERS that the Clerk of the Court shall enter final judgment as to the dismissal of Plaintiff's claims against Defendant Smith; and the Court furtherORDERS that the Clerk of the Court shall serve a copy of this

DATE	DOCKET NUMBER	PROCEEDINGS
		Memorandum-Decision and Order on all parties in accordance with the Local Rules. Signed by U.S. District Judge Mae A. D'Agostino on 5/8/2017.(copy mailed to all non-ecf parties) (ban) (Entered: 05/08/2017)
05/08/2017	143	FINAL JUDGMENT as to defendant Youel C. Smith, III, ONLY. (1) Appeal Notice Attached) (ban). (Copy served via regular mail on all non-ecf parties) (Entered: 05/09/2017)
		* * *
01/22/2019	161	TEXT ORDER: On January 18, 2019, Plaintiff filed a Letter Request, with the consent of all parties, seeking a stay of discovery and further proceedings in this matter pending a decision by the Supreme Court. Dkt. No. 160 . The request is GRANTED and

DATE	DOCKET NUMBER	PROCEEDINGS
		the Rule 16 Initial Conference scheduled for January 31, 2019 and the deadline for the parties to file a proposed Civil Case Management Plan and exchange Mandatory Disclosures are ADJOURNED without date at this time. Discovery and any further proceedings in this matter are STAYED pending review and a decision by the Supreme Court. SO ORDERED by Magistrate Judge Daniel J. Stewart on 1/22/2019. (Copy mailed to pro se defendant). (mab) (Entered: 01/22/2019)
		* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWARD G. MCDONOUGH,

Plaintiff,

v.

Youel C. SMITH III, aka Trey Smith, individually and as Special District Attorney for The County of Rensselaer, New York; Richard J. McNally, Jr., individually and as District Attorney for The County of Rensselaer, New York; Kevin B. McGrath; John F. Brown; William A. McInerney; John J. Ogden; Kevin F. O'Malley; Daniel B. Brown; Anthony J. Renna; Alan T. Robillard; and, The County of Rensselaer, New York,

Defendants.

No. 1:15-CV-1505 (MAD/DJS).

December 18, 2015.

Verified Complaint for Damages from Violation of Rights Under Color of Law (Civil Rights Action)

JURY DEMANDED

NATURE OF ACTION

Plaintiff Edward G. McDonough seeks to recover compensatory and punitive damages, reasonable attorney fees and costs against the named defendants for their actions to deprive him of his fundamental rights to due process, a fair trial, present a defense and equal protection and his public employment as secured to him by the Fourth, Fifth, Sixth and/ or Fourteenth Amendments of the Constitution of the United States and the laws of the United States and New York State, all through the conspiratorial fabrication and use of false testimony in effort to wrongfully indict and maliciously prosecute and convict him for alleged acts he did not commit that do not constitute the crimes charged as a matter of law; all of which was done primarily to protect the named Democratic candidates and operatives and/or others from prosecution, conviction, punishment or adverse political effects for the voter fraud and absentee ballot document forgery they committed to win a September 14, 2009 minor party primary election and/or past elections; cover-up their election crimes and guilt; enable Democratic candidates and/or operatives to defraud voters and forge absentee ballot votes to affect future elections as they had done for decades in the past; and/or other arbitrary and capricious reasons.

The action is predicated on Title 42, U.S. C. §§ 1983 and 1988, the Constitution, laws and statutes of the United States.

Plaintiff seeks compensatory damages for the personal injuries, including emotional distress, mental anguish, substantial attorney fees and costs

he suffered as a direct, foreseeable and natural consequence of the defendants' acts and conspiracy to impede, frustrate and hinder the due course of justice with intent to deprive him of those rights, and their neglect or refusal to prevent said deprivations. He also seeks punitive damages against the individual defendants for their intentional, malicious and unconscionable concerted actions in fabricating false testimony with the intention of using it to deprive him of his property, property interest in his public employment and money, due process liberty interest, right a fair trial and right to present a defense through a wrongful indictment, prosecution, conviction and punishment and the payment of the reasonable attorney fees he incurs in pursuing this action.

PRELIMINARY STATEMENT

District Attorney and Special Prosecutor Acted Beyond Scope of Law and Defendants Conspiratorially Fabricated False Testimony to Indict and Convict Plaintiff

1. This action arises from an unlawfully appointed Democrat Special District Attorney's conspiratorial fabrication of false testimony to scapegoat prosecute a Democrat election official for allegedly writing false data on authenticated applications for absentee ballots ("AAB"), which he did not do and does not constitute the forgery crimes charged as a matter of law, in lieu of prosecuting Democrat candidates and operatives ("Dem C/O") who fraudulently obtained and falsely completed or forged and filed AAB to obtain, forge and file

absentee ballots in forged absentee ballot envelopes to win election ("AB forgery").

2. Specifically, defendants Democrat District Attorney Richard J. McNally, Jr. ("McNally"), Special District Attorney Youel C. Smith ("Trey Smith"), named Dem C/O, police investigator and private-hire Forensic Document Examiner ("FDE") conspiratorially acted to wrongfully prosecute and convict plaintiff Rensselaer County Board of Elections ("BOE") Commissioner McDonough on seventy-four (74) felony charges and thereby cause him to incur enormous defense attorney fees and lose his public employment for allegedly writing false reasons for absentee ballot voting ("Excuses") and names of voter agents to whom absentee ballots were to be released ("AB Agent") on AAB that Dem C/O fraudulently obtained, falsified or totally forged and filed with the BOE to get and falsely vote AB to win the 2009 Working Families Party ("WFP") primary for Troy City Council.

3. The defendants entered an extra-judicial conspiracy prior and/or during a criminal investigation but prior to criminal proceedings to fabricate false testimony to initiate and continue the prosecution of McDonough mainly to protect known and identifiable Dem C/O who committed the AB forgery from prosecution, especially the chief culprits:

(a) *Kevin McGrath* ("McGrath"), brother of a respected Democrat State Supreme Court Justice, convicted drug felon and candidate who brazenly initiated the AB forgery and whose conviction was a *fait accompli,* but was given immunity to provide a basis for the scapegoat prosecution by denying his

own guilt, not incriminating the other Dem C/O who committed the AB forgery and falsely alleging that he saw McDonough write false Excuses on two (2) of many AAB he had voters sign before he or others falsely completed and filed them to obtain and forge their absentee ballot ("AB"). On another occasion, he claimed he heard McDonough talk with candidate John Brown about names he assumed McDonough was going to write on AAB as false AB Agents, which he did not report or allege, even when he publicly proclaimed he was innocent and essentially called the voters who directly incriminated him liars; all of which was uncorroborated, patently incredible and contrary to overwhelming irrefutable evidence that proved his guilt and the falsity of his "cooperation."

(b) *John Brown* ("Brown"), an ambitious, highly politically connected candidate who pushed McInerney into assisting him commit the AB forgery and whose conviction for those crimes and his perjury was a *fait accompli*, but was told by Trey Smith in 2009, 2010 and 2011 that he would not be prosecuted despite substantial known and readily obtainable evidence sufficient to convict him. He was never meaningfully prosecuted or required to provide truthful cooperation that would have incriminated other Dem C/O and exonerated McDonough even after his arrest was imminent in 2011 only because New York State Police ("NYSP") Senior Investigator Christopher O'Brien, Ret. ("Sr. Inv. O'Brien") directed an independent investigation in response to McDonough's actions in defending his innocence and exposing the scapegoat prosecution and thereby obtained readily available evidence sufficient to

convict him without Trey Smith's prior knowledge ("NYSP independent investigation").

(c) *William McInerney* ("McInerney"), the prolific AB forger, friend of McNally, supporter of Brown and operative who also committed AB forgery in support of McNally's 2007 election won by AB, threatened to take everyone down if prosecuted, obtained McNally's legal advice, retained the attorney who represented McNally in his 2007 election and destroyed his cell phone on his attorney's advice and whose conviction for hundreds of AB forgery crimes he committed in 2009 as well as 2008 and 2007 was a *fait accompli*, but was told by Trey Smith in 2009, 2010 and 2011 that he would not be prosecuted despite substantial known and readily obtainable evidence sufficient to convict him. He was also never meaningfully prosecuted or required to provide truthful cooperation that would have incriminated other Dem C/O and exonerated McDonough even after his arrest in 2011 only because of the NYSP independent investigation.

4. The other objectives of the conspiracy were to: (a) protect McNally and Democrat candidates from the adverse political effects of a proper investigation and prosecution; (b) cover-up a decades-long scheme of Dem C/O to defraud public housing residents and forge their AB votes; and (c) enable Dem C/O to commit similar AB forgery in the future.

5. The facts contained in the documents, records and testimony related to the private and criminal investigations of the AB forgery and prosecution of McDonough (hereinafter "record facts") establish that the most plausible reason for the defendants'

acts throughout is the conspiratorial scapegoat prosecution and its objectives.

6. The only reasonable inference to be drawn from the record facts is the scapegoat prosecution of McDonough. In fact, the defendants' conduct is so egregious and otherwise inexplicable that it belies any claim of reasonableness, ignorance or incompetence and makes no sense except when viewed in the context of the conspiracy and its objectives.

7. Democrat McNally unlawfully disqualified himself and had his friend Trey Smith appointed special prosecutor to a broad-scoped investigation of about ten Dem C/O and WFP operatives implicated by substantial evidence in massive AB forgery, including his friend McInerney who forged AB in support of his 2007 election won by AB. Trey Smith then immediately targeted McDonough and conspiratorially fabricated false testimony of Dem C/O and others to prosecute and convict him without probable cause for allegedly writing false voter Excuses and AB Agent names on the many AAB that substantial evidence proved known and identifiable Dem C/O totally forged or falsely completed and filed to obtain and forge AB, instead of prosecuting those guilty Dem C/O for the AB forgery.

8. To do so, Trey Smith, among other things: (a) ignored, did not obtain and buried evidence that would have been sufficient to convict the Dem C/O and exonerated McDonough; (b) gave McGrath immunity, without any legitimate reason, to deny his guilt, falsely incriminate McDonough to set the stage for his scapegoat prosecution and not tell the truth

that would have incriminated other Dem C/O; (c) lied to supervisory NYSP to protect Brown, McInerney and others from prosecution; (d) gave non-prosecution agreements to Dem C/O and others without reason or benefit; (e) fabricated false testimony to present before the Grand Jury and trial juries; and, (f) took extraordinary action before and after trial to ensure that McInerney, Brown and others did not tell the truth that would have exonerated McDonough.

9. Even after the Federal Bureau of Investigation ("FBI") and supervisory NYSP in 2011 conducted independent investigations that resulted in the discovery of more evidence sufficient to convict McInerney, Brown and Anthony Renna ("Renna") without Trey Smith's prior knowledge, Trey Smith then took action to continue the prosecution, cover-up the conspiracy and protect the Dem C/O from any meaningful prosecution by, among other things: (a) effectively quashing a federal investigation; (b) giving extraordinarily favorable plea bargains and/or jurisdictionally defective convictions to McInerney, Brown and all others; and, (c) aiding Brown in misleading the appellate court with blatant material misrepresentations of fact and law in the frivolous appeal he filed to reduce his agreed upon sentence after waiving the right to appeal, until also exposed by McDonough.

10. Most, if not all, of defendants' conspiratorial acts are a matter of record fact, including the following salient ones:

(a) McNally acted outside the scope of legal authority by disqualifying his office and having Trey

Smith appointed to a broad-scoped investigation and prosecution without written motion or legal basis as required by state law, which he much later claimed was done because McInerney and perhaps WFP operatives worked on his past campaign even though, at the time, the only identified suspects were McGrath and Anthony DeFiglio ("DeFiglio") and in any event there was never any legitimate conflict or other reason for his disqualification from the investigation or prosecution of any Dem C/O implicated in the crimes.

(b) Trey Smith prosecuted McDonough for the alleged non-criminal act of writing voter data on authenticated or ostensibly authenticated AAB which Dem C/O fraudulently had voters sign or totally forged without his knowledge and after McDonough stated his intent to expose the scapegoat prosecution joined in the indictment Michael LoPorto ("LoPorto"), whom Rensselaer County Democratic Committee Chair, Thomas Wade ("Chair Wade") did not favor and considered to be a marginal, expendable candidate.

(c) Trey Smith did not prosecute any Dem C/O that substantial known and easily obtainable evidence did and would have proven committed the AB forgery and did not meaningfully prosecute McInerney, Brown or Renna even after they were arrested or about to be arrested in 2011 only because of the NYSP independent investigation.

(d) McNally, soon after the crimes were discovered, advised McInerney to hire the attorney who represented him in his 2007 election by AB, many of which McInerney forged.

(e) McNally advised Dem C/O Robert Martiniano ("Martiniano") in 2010 that he should not disclose his knowledge of the AB forgery to the authorities "because it will all be over soon." Notably, McInerney and Brown made admissions to Martiniano, but Trey Smith had already told them that they would not be prosecuted and told the supervisory NYSP the lie that there was not enough evidence to convict them.

(f) Chair Wade told McDonough that he should not testify before the Grand Jury at the same time (soon after his attorney gave Trey Smith notice of his intent to do so) McNally and McInerney gave McDonough the names of an attorney to hire. Trey Smith threatened to prosecute BOE Commissioner Lawrence Bugbee and treated BOE employees he knew had close relationships with McDonough with hostility. The facts show that was done in concerted effort to keep McDonough from testifying before the Grand Jury because the only purported evidence to be presented against him other than his DNA allegedly being on three (3) AB documents filed at the BOE was the uncorroborated and patently incredible false testimony of McGrath and Investigator John Ogden ("Ogden") which clearly would not have been sufficient for indictment, especially when he disclosed the truth about what occurred in his office on September 14, 2009 in contradiction to the perjury of McGrath and Brown. In fact, McDonough's notice of intent to testify also caused Trey Smith to fabricate the false Grand Jury testimony of BOE employee Kevin O'Malley ("O'Malley) at that time.

(g) McNally made extra-judicial public statements about McDonough, his defense and his attorney that

had a substantial likelihood of materially prejudicing his trial.

(h) Trey Smith acted outside the scope of legal authority by indicting and prosecuting McDonough for alleged acts that did not constitute the crimes charged as a matter of state law.

(i) Trey Smith fabricated false testimony against McDonough in an investigatory capacity and role throughout the investigation, indictment and trials of the case.

(j) Trey Smith fabricated false testimony to present at Grand Jury and two trials to initiate and continue the prosecution of McDonough and convict him for acts he did not commit.

(k) Trey Smith notarized alleged forged signatures of two voters on forgery affidavits he prepared and put in evidence at the Grand Jury to get a grossly over-charged indictment.

(l) Trey Smith made extra-judicial public statements about McDonough, his defense and his attorney that had a substantial likelihood of materially prejudicing his trial.

(m) Trey Smith acted beyond the scope of legal authority by indicting and prosecuting McDonough despite having notice and knowledge that McNally's self-disqualification and his appointment were invalid as a matter of state law.

(n) Trey Smith misled supervisory NYSP with the blatant lie that McInerney and Brown could not be prosecuted because the evidence was insufficient to corroborate accomplice testimony when, in fact, the known and readily available testimonial and

documentary evidence was more than sufficient to do so and convict them.

(o) Trey Smith took extraordinary action first to protect McGrath, Brown, McInerney and other Dem C/O from being prosecuted and later to protect McInerney, Brown and Renna from being meaningfully prosecuted even after they were arrested or about to be only because of the independent NYSP investigation done in 2011.

(p) Trey Smith effectively quashed a federal investigation being conducted into the scapegoat prosecution and AB forgery based on McDonough's complaint of public corruption and falsely accused the FBI Special Agent assigned to investigate McDonough's complaint of public corruption concerning the scapegoat prosecution of misconduct.

(r) Trey Smith and Ogden caused a false complaint of misconduct to be made against Sr. Inv. O'Brien to impugn his credibility and keep him from testifying at trial about the scapegoat prosecution and the nefarious conduct of Trey Smith, Ogden and others.

(s) McNally and Trey Smith acted to prevent the County from commencing action to have the order appointing a special prosecutor nullified, despite having notice and knowledge of its invalidity and that his actions were outside the scope of legal authority.

(t) McGrath, O'Malley, Brown and Ogden gave fabricated false testimony before a Grand Jury to initiate the scapegoat prosecution.

(u) McGrath, O'Malley, Brown, Ogden, McInerney, Dan Brown, Renna and DeFiglio conspiratorially

gave fabricated false testimony at trial to continue the scapegoat prosecution.

(v) Alan T. Robillard ("Robillard"), a private-hire Forensic Document Examiner who is labeled on the world-wide-web site of a Certified Handwriting Examiner as being an "unethical professional liar for hire", effectively became part of the prosecution team, reviewed the indictment, what Trey Smith told him was evidence and gave the patently incredible and subjective fabricated false opinion trial testimony that the AB Agent names and Excuses on all the questioned AAB appeared more likely than not to have been written by McDonough but then said it was overwhelming evidence of his guilt to support the preposterous prosecution theory, corroborate the fabricated false testimony of McGrath, Ogden, O'Malley, Brown, McInerney and Renna to continue the scapegoat prosecution and convict McDonough in return for substantial witness fees (about $100,000.00).

(w) Also, upon Trey Smith's directive, Robillard specifically did not perform a simple ink analysis on Dickenson and thirteen (13) AAB filed on September 10, 2009 and September 14, 2009 because they knew all the entries on them appeared to have been written in the same ink which forensic finding alone would have exonerated McDonough and debunked the theory upon which his prosecution was based by establishing that those AAB were falsely completed or forged by McInerney, Brown and/or other Dem C/O before being filed and that the testimony of McGrath, Brown, Ogden, O'Malley and McInerney to the contrary was false.

11. Above all, Trey Smith unlawfully acted to scapegoat prosecute McDonough and protect the guilt Dem C/O from prosecution by, among other things:

(a) Giving Dem C/O and others immunity or promises of non-prosecution so they remained silent, falsely incriminated McDonough and/or did not tell the truth that would have incriminated the Dem C/O and exonerated McDonough;

(b) Not conducting a proper rudimentary investigation that would have led to the discovery of more evidence sufficient to convict McGrath, Brown, McInerney and other Dem C/O for forging AB and prevented the scapegoat prosecution;

(c) Ignoring, not obtaining and effectively burying evidence sufficient to convict McGrath, Brown, McInerney and other Dem C/O and prevent the scapegoat prosecution;

(d) Fabricating the false Grand Jury testimony of Ogden, Brown and O'Malley to corroborate the false accusations of McGrath as needed to initiate the prosecution; and

(e) Fabricating the additional false trial testimony of DeFiglio, O'Malley, McInerney, Brown, Renna and Robillard as needed to continue and cover-up the scapegoat prosecution after McDonough caused the arrest and ostensible prosecution of McInerney, Brown and Renna.

12. At all times relevant, defendants conspiratorially acted to deprive McDonough of his federal constitutional and statutory rights to due process, a fair trial, present a defense, equal protection and public employment.

13. At all times relevant, defendants initiated and continued the wrongful scapegoat prosecution of McDonough for acts he did not commit that do not constitute the crimes charged as a matter of law without probable cause based solely on fabricated false testimony, with malice and intent to deprive him of his federal constitutional and statutory rights to due process, a fair trial, present a defense, equal protection and public employment.

14. At all times relevant, defendants initiated and continued the wrongful scapegoat prosecution against McDonough without probable cause based solely on fabricated false testimony in order to coerce him into pleading guilty to alleged crimes charged or convict him and thereby deprive him of his federal constitutional and statutory rights to due process, a fair trial, present a defense, equal protection and public employment without excuse or justification and to protect from prosecution those Dem C/O who committed the AB forgery.

15. The defendants' acts also included the criminal violation of state judiciary and penal law, federal civil rights law and/ or other statutes.

16. The insidious mixed-motivated conspiratorial prosecution ended in McDonough's favor on December 21, 2012 when his wrongful prosecution on a seventy-four (74) felony count indictment ended in acquittal and dismissal of all charges after two protracted trials.

17. Nonetheless, there is little doubt that McDonough would have been wrongfully convicted but for the extraordinary acts he took in defending his innocence that, among other things, caused: (a)

the FBI to investigate the AB forgery and scapegoat prosecution in 2011 without Trey Smith's prior knowledge until he effectively stopped it; (b) NYSP Sr. Inv. O'Brien to investigate the AB forgery in 2011, arrest McInerney and make known the imminent arrest of Brown and Renna without Trey Smith's prior knowledge; (c) Trey Smith to ostensibly prosecute McInerney, Brown and Renna as well as fabricate their false trial testimony to cover-up and continue the scapegoat prosecution, which led to the discovery of more evidence of the conspiracy that otherwise would not have been disclosed because those defendants would have invoked their Fifth Amendment rights and remained silent, as planned.

PROCEDURAL REQUIREMENTS

18. Plaintiff is not required to exhaust any administrative procedures prior to suit under the United States Constitution and the Civil Rights Act of 1871.

JURISDICTION AND VENUE

19. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343 and Rules 18 and 20 of the Federal Rules of Civil Procedure to protect and remedy the deprivation of rights secured by: (a) The Fourth Amendment to the United States Constitution providing for the rights of all persons within the jurisdiction of the United States to be free from unreasonable searches and seizures; (b) The Fifth Amendment right not to be deprived of liberty without due process of law; (c) The Sixth Amendment right to a fair trial; (d) the Fourth Amendment Right to due process of law, both procedural and substantive, and (e) The Civil Rights Act of 1871, 42

U.S.C. § 1983 and § 1988 providing for the protection of all persons in their civil rights as well as compensatory damages, punitive damages, and other relief to redress the deprivation of protected federal constitutional and statutory rights under color of state law.

(d) The unlawful violations of plaintiff's federal constitutional and statutory civil rights complained of herein were committed within the Northern District and State of New York.

20. Venue is proper in this District under 28 U.S.C. § 1391 (b)(2).

21. Venue is appropriate in this district because the alleged conspiratorial acts of the defendants, especially the prosecution and trial of the plaintiff at which all of the named individual defendants gave testimony occurred therein. Also, the only defendant who resides outside of the district contracted with that county and was paid by it to testify in that trial.

Plaintiff

22. Plaintiff, Edward G. McDonough ("McDonough") is a citizen district, residing in the County of Rensselaer, Town of Schaghticoke and State of New York.

23. At all times relevant, plaintiff McDonough was and is employed by defendant The County of Rensselaer, New York, as a full-time Democratic Commissioner of The Rensselaer County Board of Elections.

Defendants

24. Defendant Youel C. Smith III, *aka* and practicing law under the assumed name of "Trey

Smith", ("Trey Smith") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

25. At all times relevant, defendant Smith was acting in his purported capacity as a Special District Attorney appointed pursuant to an *ultra vires* Order of the Supreme Court of the State of New York. Plaintiff claims against him in his individual and official capacities.

26. Defendant Richard J. McNally, Jr., ("McNally") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

27. At all times relevant, defendant McNally was employed by defendant County as its elected District Attorney. Plaintiff claims against him in his individual and official capacities.

28. Defendant Kevin B McGrath ("McGrath") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

29. At all times relevant, defendant McGrath was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

30. Defendant John F. Brown ("Brown") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

31. At all times relevant, defendant Brown was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

32. Defendant William A. McInerney ("McInerney") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

33. At all times relevant, defendant McInerney was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

34. Defendant John J. Ogden ("Ogden") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

35. At all times relevant, defendant Ogden was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

36. Defendant Kevin F. O'Malley ("O'Malley") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

37. At all times relevant, defendant O'Malley was a private citizen acting in concert and agreement with the named municipal officials, employees and

final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

38. Defendant Daniel B. Brown ("Dan Brown") is a citizen of the United States and a resident of this district, residing in the County of Albany, State of New York.

39. At all times relevant, defendant Dan Brown was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

40. Defendant Anthony J. Renna ("Renna") is a citizen of the United States and a resident of this district, residing in the County of Rensselaer, State of New York.

41. At all times relevant, defendant Renna was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities. Plaintiff claims against him in his individual and representative capacities.

42. Defendant Alan T. Robillard ("Robillard") is a citizen of the United States and a resident of the USDC, District of Massachusetts, Boston division, residing in the County of Dukes, State of New Massachusetts.

43. At all times relevant, defendant Renna was a private citizen acting in concert and agreement with the named municipal officials, employees and final policymakers in their official capacities and as a special (contract) employee of sad county for

purposes of the services provided. Plaintiff claims against him in his individual and representative capacities.

44. Defendant The County of Rensselaer, New York ("County") is a municipal corporation and governmental subdivision organized and existing pursuant to the laws of the State of New York, located in this district.

45. Defendant County operates under and pursuant to the laws, policies, practices and customs of the State of New York and the color of authority thereby vested in it.

46. The Rensselaer County Legislature was and is the legislative body of the defendant County vested with authority to enact county laws, ordinances and regulations; to establish municipal policy, custom and practice; and, to perform other legislative and administrative functions,

47. The Rensselaer County Executive was and is the executive body of the defendant County vested with the authority to establish municipal policy, custom and practice; and, to perform other executive and administrative functions.

48. Upon information and belief, at all times relevant, defendants Smith and McNally held themselves out to be, and were, acting within the scope of their employment, official office or agency with the defendant County.

49. Upon information and belief, at all times relevant, defendants Smith, McNally and Ogden acted under color of state law, to wit: under the color and pretense of the statutes, ordinances, regulations,

policies, customs, practice and/or usages of the State of New York and/or the defendant County.

RECORD FACTS COMMON TO CONSPIRATORIAL FABRICATION OF FALSE EVIDENCE, MALICIOUS PROSECUTION, AND ABUSE OF CRIMINAL PROCESS

50. The following record facts were or should have been known to Trey Smith at all times relevant before and/or during his investigation and prosecution of McDonough.

I. McGrath Initiated AB forgery before September 2009.

51. In the summer of 2009, McGrath openly and publicly bragged that he was going to take control of the WFP line for the City of Troy elections away from Republican operative Robert Mirch ("Mirch") and return it to its candidates (i.e. himself and other Democrats).

52. Subsequently, in August 2009, McGrath took action to "beat Mirch at his own game" by approaching several people he knew whom Mirch had enrolled in the WFP ("friend-lies"), including Marc Welch ("MWelch") and Jennifer Taylor ("Taylor").

53. McGrath had those WFP members sign an AAB without completing it, discussing their eligibility to vote by AB or naming an AB Agent.

54. McGrath told some of those WFP members that they would receive an AB when, in fact, he knew that none would, and none did.

55. Upon information and belief, McGrath and/or other Dem C/O then completed those AAB with false

AB Names and Excuses, filed them and obtained the AB released on them.

56. Upon information and belief, McGrath and/or others then falsely voted those AB and filed them in forged AB envelopes (hereinafter, "AB" is absentee ballot individually, or absentee ballot and AB envelope collectively).

A. *Taylor AAB: McGrath Gave McDonough a False Excuse to Write on AAB.*

57. Significantly, on August 24, 2009, McGrath brought the Taylor AAB to the BOE, but McDonough told him it could not be filed because it did not state an Excuse.

58. McGrath then told McDonough the Excuse that he said Taylor gave him and pursuant to lawful BOE practice, McDonough wrote it on the AAB so it could be filed.

59. McDonough did not know the Excuse McGrath gave him was inaccurate or false.

B. *Mirch Discovered McGrath's AB Forgery and Requested Federal Investigation.*

60. On or about September 14, 2009 BOE Commissioner Bugbee told Republican operative Mirch that AAB and AB were filed for some voters he had enrolled in the WFP.

61. Upon information and belief, on September 15, 2009 McGrath taunted Mirch that he had "taken" a number of "his" AB votes from WFP members Mirch enrolled in the WFP.

62. Consequently, on September 15, 2009, Mirch talked to a few of those WFP voters, including Taylor and Dickenson, and discovered they signed

incomplete AAB for McGrath that were falsely completed without their permission and their AB were forged.

63. Mirch then brought Taylor and Dickenson to the polls to vote in person.

64. McGrath saw Taylor and/or Dickinson at the polls and learned that they told Mirch about their falsified AAB and forged AB.

II. Brown, McInerney, DeFiglio and Others Joined in AB Forgery.

65. On or about late August or early September 2009, Brown insisted that McInerney help him commit AB forgery to win the WFP primary.

66. In turn, McInerney had DeFiglio and Renna assist in the AB forgery.

A. *McInerney and DeFiglio Had Voters Sign AAB Before September 10, 2009.*

67. Consequently, on one or about one or more occasions prior to September 10, 2009 McInerney and DeFiglio sought to have public housing WFP residents sign incomplete AAB.

68. Upon information and belief, McInerney and DeFiglio had WFP members sign an AAB without completing it, discussing their eligibility to vote by AB or naming an AB Agent.

69. Upon information and belief, Galuski also assisted McInerney and DeFiglio have voters sign incomplete AAB prior to September 10, 2009.

70. Upon information and belief, McInerney, DeFiglio and/or Galuski told some voters that

signing an AAB "was a new way to vote" or that an AB would be returned to them.

71. No voter gave any Dem C/O permission to write a false Excuse or AB Agent on their AAB, forge their AAB, falsely vote their AB or forge their signature on AB envelope.

72. Upon information and belief, McInerney, Brown, Dan Brown and/or other Dem C/O completed those AAB with false AB Names and Excuses and filed them at the BOE.

73. Upon information and belief, McInerney and/or other Dem C/O also totally forged some AAB for WFP members whose residences they visited before September 10, 2009, when it was discovered that the person moved or did not answer the door.

74. On or about September 10, 2009, about thirteen (13) AAB for voters that McInerney, DeFiglio and Galuski visited were filed at the BOE by Brown or Dan Brown.

75. All of those AAB were falsely completed or forged.

76. Upon information and belief, McInerney, Brown, Dan Brown and/or other Dem C/O obtained, forged and filed the AB released on all of those AAB.

77. On/about September 12, 2009, all the AB released on the AAB filed on September 10, 2009, were filed at the BOE.

78. All those AB were forged,

79. Upon information and belief, McGrath, Brown, Dan Brown, McInerney, DeFiglio, Renna and/or other Dem C/O committed that AB forgery in conspiracy.

80. In short, upon information and belief, McInerney, Brown, Dan Brown and/or other Dem C/O had voters sign incomplete AAB so they could complete them with false Excuses and AB Agents, file them and obtain and falsely vote their AB "the right way" for Democrats.

B. *September 12, 2009: Dem C/O Concerted Effort to Get Signed AAB.*

81. On September 12, 2009, McInerney had McGrath, Brown, Dan Brown, LoPorto, Martiniano, Gary Galuski ("Galuski"), Clement Campana ("Campana"), DeFiglio and Thomas Aldrich ("Aldrich") assist him in an effort to have WFP public housing residents sign AAB.

82. On that date, McInerney, McGrath, Brown, Dan Brown, DeFiglio, LoPorto, Martiniano, Galuski, Campana and Aldrich had WFP members sign an AAB without completing it, discussing their eligibility to vote by AB or naming an AB Agent.

83. At the time, McInerney, McGrath, Brown, Dan Brown, DeFiglio, LoPorto, Martiniano, Galuski, Campana and/or Aldrich told some voters that signing an AAB "was a new way to vote" or that an AB would be returned to them.

84. No voter gave any Dem C/O permission to write a false Excuse or AB Agent on their AAB, forge their AAB, falsely vote their AB or forge their signature on AB envelope.

85. Upon information and belief, later on September 12, 2009, Brown and/or Dan Brown took possession of all those AAB (about 35) that the voters signed that day.

86. Upon information and belief, McInerney, Brown, Dan Brown and/or other Dem C/O completed those AAB with false Excuses and AB Agents names, filed them and obtained the AB released on them.

87. Upon information and belief, McInerney and/or other Dem C/O also totally forged some AAB for WFP members whose residences they visited before September 12, 2009, when it was discovered that the person moved or did not answer the door.

88. Upon information and belief, McInerney, Brown, Dan Brown and/or other Dem C/O obtained, forged and filed those AB.

89. Upon information and belief, McGrath, Brown, Dan Brown, McInerney, DeFiglio, Renna and/or other Dem C/O committed that AB forgery in conspiracy.

90. In short, upon information and belief, McInerney, Brown, DeFiglio, Renna and other Dem C/O had voters sign incomplete AAB so they could complete them with false Excuses and AB Agents, file them and obtain and falsely vote their AB "the right way" for Democrats.

C. *Brown and McInerney Admitted the AB Forgery to Martiniano.*

91. In fact, as discussed below, on September 12, 2009, Brown admitted to Martiniano that he was going to use the AAB to forge signatures on AB envelopes and McInerney told him not to worry about it because all of the AAB were going to him.

92. Also, all the Dem C/O knew that McInerney was the de facto strategist for Troy City Council candidates, supporter of Brown (he called "Mayor"),

key operative for Chair Wade, close associate of Renna and DeFiglio, prolific AB votes gatherer and friend of McNally.

D. *Dem C/O Were Aware of AB Process and Lawful BOE Practice.*

93. At all times relevant, McGrath, McInerney, Brown and other Dem C/O knew about the AB process and related BOE practices.

94. Therefore, at all times relevant, McGrath, Brown, Dan Brown, McInerney, DeFiglio and the other Dem C/O involved in having voters sign AAB knew that an AB could not be obtained by or for a voter unless an AAB was filed.

95. At all times relevant, those Dem C/O knew that an AAB could not be filed unless it was signed by the voter and completed with all required information, including an Excuse.

96. At all times relevant, those Dem C/O also knew that an AB could not be released to anyone but a voter unless an AB Agent was named on his/her AAB.

97. At all times relevant, the named Dem C/O knew that a voter or his/her agent could legally complete an AAB and obtain their AB.

98. McGrath, Brown, Dan Brown and other Dem C/O admitted those facts at trial and none of them can genuinely deny their knowledge of the AB process or related BOE practices.

99. Thus, those Dem C/O knew that they could not obtain and falsely vote an AB unless they first forged or completed a signed AAB with a false Excuse and AB Agent.

100. In fact, AB voting is a simple process involving an AAB, AB and AB envelope.

101. An AAB is a simple, single page document that must be signed and completed by the voter or his agent before it can be filed with the BOE.

102. Once an AAB is completed, signed and filed, an AB and AB envelope is mailed by the BOE to the voter or, if an AB Agent is named on the AAB, released to the AB Agent or any person designated by the voter or an AB Agent to obtain it.

103. Under state law, any of those documents can be completed, filed and/or delivered by or to a voter or any agent of a voter.

104. At all times relevant, it was lawful BOE practice to assist voters and their agents, including political operatives and community activists, properly complete and file AAB.

105. At all times relevant, it was lawful BOE practice to release AB to any person designated by the voter or his/her agent to obtain it.

106. Therefore, the Dem C/O adopted a simple scheme to commit AB forgery in 2009 and prior years, i.e. they targeted public housing voters to defraud them into signing incomplete AAB regardless of whether they were eligible to vote by AB or would vote for Democrat candidates and then completed them with false Excuses and AB Agents to obtain and vote their AB "the right way" because they would be less likely to know, care or complain about it.

107. As discussed below, DeFiglio admitted to Trey Smith and Ogden in October or November 2009 that

the 2009 AB forgery was committed principally by McInerney and Brown and that Dem C/O had engaged in the same AB forgery scheme to defraud public housing voters for at least the prior 25 years, decades before McDonough was a BOE Commissioner.

108. In fact, the subject AB forgery was discovered only because McGrath brazenly targeted some voters Mirch had enrolled in the WFP, Brown wanted as many AB votes as possible and McInerney forged too many AB. For example, when DeFiglio was assisting McInerney, if a voter had moved or did not answer the door, McInerney said *"that one's ours"*, and forged AB documents for that voter.

E. *McGrath and McInerney Told McDonough that Dem C/O Were Going to Engage in Concerted Effort to Obtain AB Votes.*

109. On or about early September 2009, McInerney mentioned to McDonough that Dem C/O were going to engage in a concerted effort to get AB votes for the WFP primary.

110. However, McInerney and all the other Dem C/O involved in effort to have voters sign AAB knew that McDonough was not involved in any campaign for any primary election.

111. Therefore, those Dem C/O should have disclosed to Trey Smith through counsel that McDonough was not involved in their efforts to obtain AB votes, especially after he leaked to the media on or about October 2009 and, thereafter, that McDonough was the primary target.

112. Regardless, the record facts also make it clear that by November 2009, Trey Smith knew that

McDonough did not participate in the campaign activities of any candidate involved in any of the approximately forty (40) primary elections held in 2009.

113. More importantly, as discussed below, Trey Smith and Ogden admitted during McDonough's prosecution that they had no reason to suspect he was involved in the AB forgery until March 2010 when McGrath, for immunity, accused him of writing false Excuses on two of the many AAB he filed in the WFP, Democrat and Independent Party primaries.

114. In truth, the record facts establish that no competent or incompetent investigator could have had reasonable cause to suspect that McDonough falsified AAB or was involved in the AB forgery at any time during Trey Smith's investigation, even after McGrath made his patently false accusations against him.

III. Events of September 14, 2009 at BOE and McDonough's Office: Brown Filed About 30 Forged/Falsified AAB. Brown Gave McDonough/O'Malley False AB Agents/ Excuses for 13 AAB. McGrath Witnessed Brown Give O'Malley False Excuses.

115. On September 14, 2009, Brown brought the AAB (about 35) that he, McInerney, Dan Brown, DeFiglio, LoPorto, Martiniano, Galuski, Campana and/or Aldrich had voters sign on or before September 12, 2009 to McInerney to be photocopied and used to forge AB envelopes.

116. On September 14, 2009, Brown then obtained those AAB from McInerney and brought them to the BOE for filing.

117. Upon information and belief, McInerney, Brown and/or Dan Brown purposely did not falsely complete thirteen (13) of the AAB that Brown filed on September 14, 2009, so that a BOE employee would assist in the filing process by unwittingly writing the false Excuses and AB Agents names they gave them onto those AAB to give them plausible deniability if caught.

118. It may also be that Mirch discovered through Taylor and Dickenson that McGrath was involved in the AB forgery before Brown brought those AAB to the BOE.

119. Brown vaguely admitted at trial that he looked at some of those AAB before he brought them to the BOE and noticed that "some" were completed.

120. Brown also admitted at trial that he did not ask to speak with McDonough and had no specific intent to do so at that time.

121. Brown also admitted at trial that he intended to take the AB released on those AAB to McInerney so he could forge them.

122. In accordance with BOE practice, McDonough reviewed the AAB to ensure that they could be filed and found that all but thirteen (13) were completed and signed.

123. McDonough set aside five (5) AAB that did not name an AB Agent and told Brown that the AB for them would be mailed to those voters and could not be released to him.

124. In response, Brown asked McDonough to write his name as AB Agent on them so the AB could be released to him, but McDonough refused and

reiterated that only an AB Agent name provided by the voters could be entered on any AAB.

125. Brown then used his cell phone and told McDonough that he obtained the AB Agent names that the voters gave to others for those AAB.

126. However, Brown did not obtain that information from the voters.

127. In fact, Brown first telephoned McInerney. He then telephoned WFP Chair James Welch ("JWelch") and WFP Co-Chair Brandt Caird ("Caird") and got their permission to falsely name them as the voters' AB Agents on those AAB.

128. Brown admitted those facts at trial.

129. However, Brown did not admit that he gave those Excuses or AB Names to McDonough and O'Malley or the truth that would have proved the perjury of McGrath and O'Malley, proved the conspiratorial scapegoat prosecution and exonerated McDonough. Instead, he committed more perjury to continue the scapegoat prosecution as discussed below.

130. In any event, McDonough did not know that those voters never gave anyone an Excuse or AB Agent name or that Brown did not obtain them from the voters or their agents.

131. Brown then gave McDonough the names he said the voters gave as AB Agents.

132. In accord with lawful practice, McDonough wrote those names onto those AAB.

133. McDonough also told Brown that (8) AAB did not state an Excuse and they could not be filed

unless Excuses the voters gave were obtained and entered on them.

134. McGrath then came into the room and asked McDonough for assistance.

135. So, McDonough called O'Malley into the office and asked him to help Brown by writing the Excuse any voter gave onto their respective AAB if he obtained it.

136. Brown made telephone calls and told O'Malley the Excuses he said voters gave.

137. In accord with lawful practice, O'Malley then wrote those Excuses onto those eight (8) AAB while sitting across the desk from Brown.

138. McDonough, McGrath, Brown and O'Malley were in the small office at that time.

139. Upon information and belief, O'Malley did not know that those voters never gave anyone an Excuse or that Brown did not obtain them from the voters or their agent.

140. Upon information and belief, Brown, McInerney and/or other Dem C/O forged or falsely completed all of those AAB before Brown brought them to the BOE.

141. At the same time, on September 14, 2009, Brown also brought the AAB for David Daniel ("Daniel") in the WFP primary and AAB for Kathleen DeFabio ("DeFabio"), James Petit ("Petit") and Charles Tangredi ("Tangredi") in the Independent and Democratic Party primaries to the BOE and filed them separately from the other AAB.

142. As discussed below, Brown forged those four (4) AAB and AB released on them.

A. *Brown Asked McDonough to Take the AB Release on AAB to McInerney. McInerney and/or Others Forged Those AB and AB Envelopes.*

143. Before Brown left the BOE that day, he told McDonough that McInerney was returning all the AB released on all those AAB he filed to the voters, but he could not wait for them and asked him to deliver those AB to McInerney at his office in Troy City Hall.

144. As stated, McInerney previously told McDonough that Dem C/O were obtaining AB for the WFP primary and Brown was acting as an agent of all those voters.

145. Therefore, McDonough brought those AB to McInerney when he took a lunch break walk with O'Malley. O'Malley witnessed McDonough leave the AB with McInerney.

146. All those AB were later forged by McInerney and filed at the BOE by Couch at the request of LoPorto.

B. *McInerney Staged Return of AB. Renna Aided Brown in AB Forgery. LoPorto Asked Couch to Take the Forged AB to the BOE.*

147. On September 14, 2009, McInerney met Campana, LoPorto, Brown and Renna purportedly to return AB to the voters who signed AAB on September 12, 2009.

148. Renna then gave Brown a few AB but stopped him from voting them in public.

149. In any event, after only a short time, McInerney announced that they were "done."

150. Upon information and belief, McInerney staged the event to give an appearance that the forged AB were completed by the voters, especially because of McGrath's actions.

151. McInerney testifie d at trial that he forged all of those AB documents.

152. McInerney testified that he did not want to forge all those AB documents because he did not trust the WFP operatives and was concerned the crimes would be discovered, but he was pressured into doing it by all the Democrat candidates, including Brown and LoPorto.

153. Notably, McInerney also testified that he refused to file those forged AB and demanded that one of the candidates do it because he did not want to forge them in the first place, did not trust the WFP and feared that the scheme would be discovered.

154. Upon information and belief, McInerney refused to file those forged AB, more specifically, because McGrath already bragged to Mirch that he took some of "his" AB votes and McInerney rightly expected Mirch did, or would, discover the AB forgery through those voters.

155. McInerney testified at trial that he refused to file those particular forged AB.

156. In his written deposition dated September 16, 2011, McInerney stated that on September 15, 2009 LoPorto called several times and asked if the AB *"were done yet"* and after he forged them he gave them to LoPorto at City Hall in a manila envelope.

157. On September 15, 2009, LoPorto then gave those forged AB to Couch inside a folded newspaper and asked her to file them with the BOE.

158. On September 15, 2009, Couch filed those forged AB at the BOE.

159. McInerney testified that LoPorto knew those AB were forged when he got them.

160. However, McInerney admitted at trial that McDonough was not involved in the solicitation of AAB or forging of AB or aware of his criminal activities.

IV. Private Investigation Obtained Evidence that was Sufficient to Convict McGrath and DeFiglio and Should Have Lead to Discovery of More Evidence Sufficient to Convict Other Identifiable Dem C/O.

161. On or after September 15, 2009, Mirch obtained the BOE Absentee Voter Master List Summary that identified the AB Agents on the AAB filed for the WFP primary. Trey Smith also later obtained that public record, which is incorporated herein by reference.

162. Mirch then hired private investigators to obtain statements from the voters.

163. Investigators obtained affidavits from about thirty-five (3 5) voters who stated that their AAB were falsely completed or totally forged and their AB were forged. Those voter affidavits incorporated herein by reference.

A. Dem C/O Defrauded Voters into Signing Incomplete AAB. Voters Identified McGrath and DeFiglio by Name and/or Described Brown,

McInerney and Other Dem C/O by Appearance. Known and Identifiable Dem C/O Obtained. Forged and Filed AB Documents.

164. Some voters named McGrath and/or DeFiglio and/or described McInerney, Brown, Dan Brown and other Dem C/O as having them sign AAB on September 12, 2009.

165. Voters, therefore, likely would have identified McInerney, Brown, Dan Brown and others if they were shown photographs that accurately depicted their appearance.

166. Again, some voters disclosed that Dem C/O told them that if they signed an AAB an AB would be returned to them or it was "a new way to vote."

167. Therefore the voters' testimony was also compelling circumstantial evidence that McGrath, DeFiglio and identifiable Dem C/O committed the AB forgery in conspiracy.

B. *Dem C/O were Named as AB Agents on Falsely Completed/Forged AAB.*

168. Furthermore, the relevant BOE records showed that the following Dem C/O and WFP operatives were named an AB Agents on the number of falsified and forged AAB as follows: (a) McInerney: *1* (Suozzo); (b) Brown: *1* (Daniel; (c) McGrath: 2 (Taylor and Dickenson); (d) Rick Mason (friend and helper of McGrath): *2*; (e) Michael Leonard (relative of McGrath): *2*; (f) DeFiglio: *6*; (g) JWelch: *7*; (h) Caird: *8*; and, (i) Aldrich: *19*.

169. Aldrich was a known supporter and associate of LoPorto and WFP operatives.

C. *Evidence Was Sufficient to Convict McGrath, DeFiglio and Other Dem C/O.*

170. Therefore, the testimonial and documentary evidence obtained through private investigation by September 2009 was sufficient evidence to prove, among other things, that: (a) Known/identifiable Dem C/O had voters sign an AAB, but not complete it; (b) Dem C/O did not ask voters if they had a valid reason to vote by AB or wanted to name an AB Agent to obtain and deliver their AB; (c) False Excuses and/or AB Agent names were later written on the AAB; (d) The AAB were possessed and filed at the BOE by the Dem C/O; (e) The AAB for other voters were totally forged; (f) The AB released on the falsified/forged AAB were obtained by Dem C/O; (g) All those AB were forged and filed in support of Democrat candidates; (h) The object crime was the false voting of AB; (i) The defrauding of voters, falsification and forgery of AAB, forgery of AB envelope and filing of false documents were crimes ancillary to the false voting of AB; (j) The forged AB documents were direct and likely forensic evidence; and, (j) The Dem C/O who had voters sign AAB and/or were named as AB Agent on falsified/forged AAB were incriminated in crimes or material witnesses (i.e. McGrath, DeFiglio, McInerney, Brown, Dan Brown, LoPorto, Campana, Galuski, Aldrich, JWelch, Caird, Mason, Leonard).

171. In short, that evidence was sufficient to prove that all the AB released on those AAB were forged and filed by known and/or identifiable Dem C/O.

172. That evidence proved and common sense dictated the AB forgery was committed by those who

directly benefited from it, i.e. known and identifiable Dem C/O.

173. That evidence proved and common sense dictated that the AB forgery was committed by those known and identifiable Dem C/O acting in conspiracy.

174. That evidence proved and common sense dictated that anyone who had voters sign AAB, who was named as AB Agent on AAB or who filed AB document(s) committed the AB forgery or were material witnesses, i.e. the Dem C/O.

175. In particular, the affidavits of MWelch and Taylor established that McGrath knew on September 15, 2009 that Mirch brought them to the polls after learning that he had them sign AAB that were later falsely completed and their AB were obtained, forged and filed.

176. Also, numerous voters identified DeFiglio by name as having had them sign AAB that were subsequently falsely completed for release of AB that were forged.

177. Therefore, the record facts establish that the evidence known by September 2009 was sufficient to convict McGrath and DeFiglio of committing the AB forgery with others.

178. As discussed, the record facts also establish that if that evidence was followed by only rudimentary investigation and prosecution tactics it would have led to discovery of more evidence sufficient to convict all the other Dem C/O who committed the AB forgery, specifically Brown, Dan Brown, McInerney and Renna.

179. Furthermore, that evidence proved and common sense dictated that the completion of AAB with false AB Agents and Excuses was integral to the AB forgery.

V. *Lambertsen* Action Commenced to Invalidate Forged AB. Brown Prepared Press Release for WFP to Accuse Mirch of Lying.

180. On September 23, 2009, Christian Lambertsen commenced action to invalidate AB filed by Dem C/O in the WFP based on sixteen voter affidavits, affidavit of Mirch and BOE Absentee Voter Master List Summary.

181. Those papers showed only that: forty-four (44) AB were released to McGrath, Brown, Rick Mason, Thomas Aldrich, DeFiglio, JWelch, Caird and McInerney; at least thirty-five (35) AB were falsely voted and filed with the BOE; and, at least thirty-five (35) AAB were completed falsely after being signed.

182. No particular person was identified as having falsely voted any AB, forged any AB envelope or completed falsely any AAB.

183. However, it was general knowledge and a matter of common sense that only those who stood to benefit from the obvious broad-scoped scheme to falsely vote AB were the Dem C/O who also were known to have been involved in a concerted effort "get out the vote" by AB.

184. On about that same day, Brown asked Welch, Caird and Couch to meet him at LoPorto's Restaurant the next day, and they agreed.

185. Brown also asked McDonough if he would meet him there the next day.

186. McDonough met Brown because he was named in the *Lambertsen* action and upset about the AB forgery, especially after the activity in his office on September 14, 2009.

187. Notably, McGrath, McInerney, DeFiglio, Renna and LoPorto were not present.

188. At the meeting, Brown asked the WFP members to issue a Press Release he and his brother had prepared to publicly accuse Mirch of making false allegations of voter fraud.

189. Couch refused Brown's request and questioned him about the AB forgery.

190. At that time, Brown told Couch that no crimes were committed, *"they were there"* and *"it isn't as bad as it looks"* but he appeared to the others to be acting nervous and "guilty."

191. At that time, Brown did not accuse McDonough of writing false data on any AAB, ask him to make any comments or redirect any questions about the AB fraud to him.

192. McDonough did not know why Brown asked to meet with him, did not know anyone else would be present, did not know who forged the AB documents and was upset about the filing of false AB with the BOE so he asked if anyone was recording the discussion, expressed anger at Brown and WFP about the false use of their names as AB Agents and asked what they were going to do when confronted with prosecution and perhaps jail.

193. Brown admitted those facts at trial and said that he asked McDonough to be there only to explain the AB process, if needed.

194. Brown also admitted that he never talked to McDonough about the AB forgery that he and other Dem C/O committed anytime before, during or after the meeting.

195. Still, Trey Smith introduced McDonough's comments into evidence at Grand Jury and trial as admissions and argued in summation: *"who asks [if anyone was recording the discussion] but a guilty person"*; even though they were innocuous,

196. It is ironic that in doing so, Trey Smith admitted his own liability and role in the conspiratorial scapegoat prosecution when he compelled Sr. Inv. O'Brien to be subjected to an interrogation based on a false allegation of impropriety made against him after he directed the independent NYSP investigation into the AB forgery and scapegoat prosecution, solely to question him about the FBI investigation of McDonough's complaint of public corruption.

197. Specifically, as discussed below, Trey Smith asked Sr. Inv. O'Brien whether the FBI *"bugged"* his office or *"tapped"* his telephone when investigating McDonough's complaint of the scapegoat prosecution, while he perspired so profusely that sweat dripped down his face.

198. Upon information and belief, as admitted by Trey Smith, he would not have made those admissions of guilt unless he was involved in the conspiratorial scapegoat prosecution that the FBI

and NYSP sought to expose based on McDonough's complaint and actions.

VI. McDonough Not Implicated in the AB Forgery.

199. In fact, McDonough was not implicated in the AB forgery by any voter, witness, documentary or relevant fact any time prior to December 2012.

VII. McInerney Got Patronage Job After Forging AB Documents for Democrats Including McNally in 2007 Election Won by AB, Threatened to Take Everyone Down if Prosecuted, Got Advice from McNally, Retained McNally's Attorney and Destroyed Evidence on Attorney's Advice.

200. In 2007, Chair Wade gave McInerney the chance to earn a patronage job by working on campaigns after he was fired from the state legislature for telling a female co-worker that she was promoted because she gave their male boss oral sex and a male homosexual coworker witness to it that he was upset because he was not given the same opportunity.

201. Subsequently, McInerney earnestly returned to committing massive AB fraud.

202. That same year, McInerney forged hundreds of AB documents to help Democrats win election, including McNally, Brown and a majority of the candidates for Troy City Council.

203. McInerney and McNally became friends through the 2007 election process.

204. At trial, McInerney testified that Renna was like a father to him and taught him how to commit AB forgery (which, of course, Renna denied).

205. At all relevant times, Renna was known by the named Dem C/O and others as being a longtime wise-guy operative and close associate of McInerney.

206. At all relevant times, DeFiglio was known by the named Dem C/O and others as being a longtime operative and close associate of McInerney.

207. DeFiglio later admitted to Trey Smith that he also assisted McInerney commit AB forgery for Democrats, including McNally and Brown, in the 2007 elections.

208. In January 2008, Chair Wade had McInerney appointed Troy City Clerk by vote of the Troy City Council Democrat majority, including Brown, in reward for his instrumental role he played in getting them and McNally elected in 2007.

209. Thereafter, McInerney committed AB forgery for Democrat candidates in 2008 elections and the subject 2009 WFP primary, with the help of DeFiglio and Renna.

210. Upon information and belief, McInerney told candidates that he committed AB forgery for them before, during and/or after he did it so he could later demand protection from prosecution and/or political favors from them,

211. Thus, on or about September 2009, McInerney openly warned that he would *"take everyone down"* with him if he was prosecuted for the AB forgery.

212. Obviously, McInerney's threat would have concerned only those who participated in his AB forgery or knowingly benefited from it.

213. McInerney admitted at trial that soon after the AB forgery was discovered he drove to McNally's home (about 20 miles) only to ask what attorney he should hire because he did not want to talk on the telephone, but claimed that they did not talk about anything else.

214. McInerney admitted that McNally advised him at that time to retain the attorney who represented him in his 2007 election won by AB, many of which McInerney forged.

215. McInerney admitted that he retained McNally's attorney based on his advice.

216. McInerney admitted that he followed his attorney's advice and threw his cell phone in the river to destroy evidence and evade subpoena in the *Lambertsen* action. Again, McInerney's relevant trial testimony is incorporated herein by reference.

217. Trey Smith knew or should have discovered those facts during his investigation.

218. However, those and many other significant facts which also prove the conspiratorial prosecution were disclosed only after McDonough's indictment because of the actions he took in defending himself that caused Sr. Inv. O'Brien and the FBI to take action that led to the ostensible prosecutions of McInerney, Brown and Renna, as discussed.

219. It is expected that McInerney's cell-phone records, which Trey Smith repeatedly claimed the NYSP could not obtain during his investigation

despite repeated attempts, will show he communicated with McNally and Dem C/O before and/ or during the scapegoat prosecution.

220. It is expected that McNally's public cell-phone records, which he refused to release despite a FOIL request, will show he communicated with McInerney, Trey Smith and Chair Wade before and/or during the scapegoat prosecution.

221. It is expected that Trey Smith's cell-phone records will show that he communicated with McNally before and/or during the scapegoat prosecution.

VIII. Mirch Calls for Federal Investigation and Takes Evidence to U.S. Attorney

222. On September 28, 2009, Mirch held a press conference and called for a federal investigation of the AB forgery because, upon information and belief, he was concerned that McNally would not prosecute McGrath or any other Dem C/O who committed the crimes.

223. At the same time, Mirch also announced that he was taking evidence of the AB forgery to the U.S. Attorney to demand a federal investigation.

IX. Chair Wade Picked McDonough to Take Fall for AB Forgery.

224. Upon information and belief, on or before September 28, 2009, Chair Wade met with some Dem C/O and discussed how the AB forgery should be *"handled."*

225. Chair Wade is a past BOE Commissioner and operative for over 40 years.

226. Upon information and belief, in 2009, he was allied with McGrath, Brown, McNally and McInerney, but not in favor of LoPorto and he thought McDonough was disloyal for voting against his 2006 election.

227. Upon information and belief, in 2009, Chair Wade was concerned about the prosecution of any Dem C/O, especially his key operative whom he had hired as Troy Clerk McInerney, the highly politically-connected, rising-star Troy Councilman Brown and brother of respected jurist, McGrath.

228. Upon information and belief, on or before September 28, 2009, Chair Wade picked McDonough to "take the fall" and be prosecuted for alleged crimes he did not commit to protect the Dem C/O from being prosecuted for the AB forgery they committed.

X. McNally Unlawfully Disqualified His Office and Had Trey Smith Appointed. McNally and Trey Smith Acted Beyond Scope of Legal Authority.

229. Then, on September 28, 2009, the same day that Mirch held a press conference and publicly called for a federal investigation, McNally unilaterally disqualified his office and had Trey Smith appointed to any investigation or prosecution related to the AB forgery by an off-the-record conference in-chambers conference with County Court Judge Robert Jacon and the *Lambertsen* attorney.

230. McNally disqualified himself and assistants from a broad-scoped investigation and prosecution without written motion that established they all had

an impermissible conflict or other lawful basis to be disqualified, in contravention of State law.

231. At some time, an unsigned letter dated September 18, 2009 requesting the appointment of a special prosecutor that McNally purportedly sent to the County Court but not stamped by the county clerk was produced. That letter is incorporated herein by reference,

232. On September 28, 2009, the County Court executed an order stating that *McNally "disqualified himself and his staff"* for acting in the matter pertaining to the investigation of the *Lambertsen* action *"based on the speculation of politics and the appearance of impropriety ..."* That Order is incorporated herein by reference.

233. Consequently, McNally disqualified his office from a broad-scoped investigation of what Trey Smith publicly called "massive voter fraud" and the prosecution of all persons rather than from "a particular case" (i.e. person) as required by N.Y.S. County Law § 701.

234. It is also clear from his purported letter and the court Order that *McNally* did so without showing any actual or substantial likelihood of prejudice to any particular defendant because of a conflict of interest or abuse of confidence, as required by state law.

235. In his letter, McNally asked for the appointment of a special prosecutor "to *avoid the appearance of impropriety"* (i.e. presumably from the investigation or prosecution of fellow Democratic candidates, officials and/or operatives) but did not show any legal basis for his disqualification from the

investigation or prosecution of McInerney, McDonough or any person.

236. Notably, at that time, only McGrath and DeFiglio were identified by name as being involved in the solicitation of AAB. McInerney was not yet named or identified by any voter or witness as being involved in the AB forgery.

237. Later, even with the benefit of hindsight, McNally opposed McDonough's motion to disqualify Trey Smith by asserting that he and his staff were disqualified from the matter based on the affidavits of the voters and Mirch in support of the *Lambertsen* action. McNally's My 7, 2011 affidavit is incorporated herein by reference.

238. In short, McNally therein asserted for the first time that it was his opinion on September 26, 2009 that he was disqualified from investigating or prosecuting any person for any of the subject election crimes because: (a) McInerney had worked on his 2007 campaign; (c) *DeFiglio* had done campaign work with McInerney in the past; (d) he had contact with *James Welch* during his 2007 campaign; and, (b) he believed that Caird worked on his 2007 campaign but did not know whether Aldrich did.

239. Therefore, McNally failed to show any conflict of interest or abuse of confidence that would have actually or likely prejudiced any person by his investigation or prosecution of any matter (although any such retrospective justification still would not have cured the unlawful appointment in 2009).

240. Specifically, he did not establish that he and all his assistants should be disqualified from the prosecution of McDonough or McInerney or any

identified person because it would result in an actual or substantial risk of prejudice to any such person (or defined matter).

241. McNally's unlawful self-disqualification was an essential step in the extra-judicial conspiratorial scapegoat prosecution.

242. It was that act followed by the investigatory suppression of evidence, opposition to the nullification of Trey Smith's unlawful appointment and conspiratorial fabrication of false testimony that allowed for the initiation and continuation of the wrongful prosecution of an innocent person in lieu of those guilty of the election crimes.

243. Later, in an affirmation in opposition to McDonough's motion for disqualification of Trey Smith and/or dismissal of the indictment based on his unlawful appointment, McNally retrospectively claimed that he disqualified himself from the matter because McInerney worked in his 2007 campaign and perhaps Caird and Welch did also, but he did not recall.

244. Thus, McNally asserted after-the-act that he could previously disqualify his office from such a matter prospectively without written motion or specific legal basis because one or more people who worked in some undefined role on his past election campaign might later be implicated or witness to crimes, even though not yet identified as such.

245. As a matter of well-established State law, however, McNally did not establish a legal basis for the disqualification of his entire office from the investigation and prosecution of McGrath, DeFiglio, Brown, McInerney or any person involved in the AB

forgery as required under controlling State law at the time.

246. Specifically, there was no legal or factual basis even asserted for McNally's self-disqualification from an investigation or prosecution of most of the Dem C/O or McDonough.

247. Additionally, McNally did not file a proper written motion for disqualification based on legally sufficient grounds as required by clearly established State law.

248. Therefore, McNally's disqualification was unlawful and all his acts in relation to the investigation and prosecution of McDonough were beyond the scope of legal authority.

249. Similarly, Trey Smith's appointment was a nullity and all his acts in relation to the investigation and prosecution of McDonough were beyond the scope of legal authority.

250. As stated, Trey Smith also acted beyond the scope of legal authority by indicting and prosecuting McDonough for alleged acts that do not constitute the forgery crimes charged.

251. As stated, upon information and belief, McNally unlawfully disqualified his office and had Trey Smith appointed to scapegoat prosecute McDonough and protect McInerney, McGrath, Brown and other Dem C/O from being prosecuted for their AB forgery.

252. Furthermore, McNally did not disqualify his entire office from a pending Grand Jury investigation of allegations made against Chair

Wade who only months before selected him as Democratic candidate for District Attorney.

253. Upon information and belief, McNally did not in 2012 and/or 2013 disqualify his entire office from the prosecution of alcohol-related driving charges against the daughter of Chair Wade from whom he obtained support for nomination as the Democratic candidate for Justice of the Supreme Court in 2013.

254. For all the reasons discussed, those facts are more circumstantial evidence of his alleged misconduct in furtherance of the wrongful prosecution of McDonough.

255. If McInerney had then or previously admitted to McNally that he committed AB forgery and/or threatened to *"take him down"* if prosecuted, McNally was required to disclose those facts to the court and McDonough in support of the disqualification and thereafter.

256. Even still, McNally would not have had any basis for the disqualification of his entire office unless he was expected to be called as a witness because there could not have been any attorney-client relationship or other actual or likelihood of prejudice, regardless of his friendship or past campaign assistance.

257. Upon information and belief, McNally also violated the rules of ethics and N.Y.S. Judiciary Law § 493 by giving legal advice to McInerney, McDonough and Martiniano, talcing physical custody of AB documents and DNA reports related to the case and discussing the matter with Trey Smith subsequent to his unlawful self-disqualification.

258. Upon information and belief, Trey Smith also violated the rules of ethics, various provisions of N.Y.S. and United States law, including N.Y.S. Judiciary Law § 493 and § 487, by among other things: fabricating false testimony to indict and convict McDonough; indirectly giving legal advice to McDonough that was contrary to his interests; depriving McDonough of his right to present a defense; suppressing exculpatory evidence; and aiding McInerney, Brown, McGrath and other Dem C/O in avoiding prosecution for their crimes.

259. Upon information and belief, McNally, Trey Smith and the named defendants also conspiratorially violated 18 U.S. Code § 242 by depriving McDonough of his rights secured and protected by the Constitution or laws of the United States under color of State law.

260. Consequently, Trey Smith is not entitled to absolute or qualified immunity for any of his actions related to the investigation, indictment and prosecution of McDonough

261. Similarly, McNally is not entitled to absolute or qualified immunity for any of his actions related to the investigation, indictment and prosecution of McDonough.

XI. McNally, McInerney, Brown, Chair Wade and Others Spread the Word to Dem C/O that They Should Not Talk Because "It Will All Be Over Soon." Trey Smith Targeted McDonough for Prosecution.

262. The record facts prove that almost immediately after being appointed on September 28, 2009, Trey Smith targeted McDonough for

prosecution without probable cause in lieu of prosecuting the known and identifiable Dem C/O for the AB forgery they committed.

263. However, upon information and belief, Trey Smith had to ensure that there was and would be no federal investigation of the AB forgery before initiating McDonough's scapegoat prosecution because Mirch publicly called for it and brought evidence to the U.S. Attorney's Office on the same day that McNally had him appointed special prosecutor.

264. Therefore, on or about between September 28, 2009 and October 14, 2009, Trey Smith contacted the U.S. Attorney's Office under the pretense of legitimate law enforcement and determined that there would be no federal investigation or prosecution of the 2009 WFP primary AB forgery. See, copy of letters Trey Smith sent to the U.S. Attorney and FBI on April 27, 2011 and April 28, 2011 after he learned about the FBI investigation are attached hereto as *Exhibit A*.

265. Then, on or about October 1, 2009 until July 2011, Chair Wade, McNally, Brown, McInerney, Renna and others told the Dem C/O implicated in the AB forgery that they should not talk to the authorities or worry about the matter because *"it will all be over soon."*

266. Upon information and belief, Trey Smith prior to October 1, 2009 told McInerney and Brown through their attorneys that they would not be prosecuted for the AB forgery.

267. Thereafter, on or about late October and/or early November 2009, Trey Smith leaked to the press

and others that McDonough was a primary target whose prosecution was imminent even though there was no basis to suspect he was involved in the AB forgery.

268. Thereafter, on or about October 2009 and all time relevant thereafter, Trey Smith conspiratorially fabricated false evidence to initiate and continue the prosecution of McDonough and protect the Dem C/O who committed the AB forgery from prosecution.

XII. Hearing Evidence was Sufficient to Lead to Conviction of Brown, McInerney and All Other Guilty Dem C/O.

269. On October 1, 2009, the State court held a hearing in the *Lambertsen* case.

270. Trey Smith attended the hearing and took possession of all the falsified/forged AB documents produced or introduced into evidence.

271. The testimonial and documentary evidence at the hearing implicated McGrath and DeFiglio by name and identifiable Dem C/O by description in the AB forgery.

272. The record of the proceeding which Trey Smith attended confirmed that the AB forgery was committed by the Dem C/O who "worked the streets" to solicit AB.

273. Also, Trey Smith worked with McDonough and other employees of the BOE during that time to gain a firm understanding of the election process, etc.

274. Furthermore, the record facts show that if followed by rudimentary investigation and prosecution tactics that evidence would have led to the discovery of evidence sufficient to convict

McGrath, DeFiglio, McInerney, Brown and all other Dem C/O guilty of the crimes.

A. *Brown Committed Perjury re Daniel AB Documents He Forged.*

275. No Democrat candidate except Brown testified at the hearing.

276. In part, Brown testified that WFP member "David Daniels" was a friend who completed or gave him permission to complete his AB documents that he filed.

277. In truth, Brown and Daniel were not friends and Brown had forged all of the AB documents he filed for him.

278. Brown also forged all the AB documents that he filed for DeFabio, Petit and Tangredi in the Independence Party and Democratic Party primaries.

279. Upon information and belief, LoPorto gave Brown the name of one or more of those persons for the purpose of AB voting.

280. More notably, as stated, Brown filed forged AAB for DeFabio, Petit and Tangredi at the same time on September 14, 2009 that he filed the forged Daniel AAB. Those AAB are incorporated by reference.

281. Thus, Brown committed perjury in a highly publicized case in front of Trey Smith knowing that Daniel, DeFabio, Petit, Tangredi and other witnesses and their forged AB documents were readily available to prove his guilt of AB forgery and perjury.

282. Additionally, Trey Smith took possession of the forged Daniel AB documents, knew Brown was a suspect and knew Daniel was a material witness.

283. It was also a matter of public record and known or should have been known to Trey Smith that Brown was also involved in Democratic and Independence Party primaries.

284. All the AB documents filed in the Troy City Council Democratic and Independent Party primaries were easily obtainable by Trey Smith at all times relevant.

285. Therefore, Trey Smith should have obtained the testimony of Daniel as well as the testimony and forged AB documents of DeFabio, Petit and Tangredi that alone would have been sufficient to convict Brown, but he did not.

B. *Suozzo Testified About AB Documents McInerney Forged.*

286. Brian Suozzo ("Suozzo") testified at the *Lambertsen* hearing that his purported AAB, AB and AB envelope were forged.

287. Suozzo lived a few houses away from McInerney and knew him personally.

288. McInerney enrolled Suozzo in the WFP in 2007.

289. McInerney was named as the AB Agent on Suozzo's forged AAB.

290. Suozzo had no contact with any other Dem C/O about AB voting.

291. McInerney had also forged AAB and AB for Suozzo and many other voters in 2007, 2008 and

2009 elections in his distinctly unique and recognizable handwriting.

292. Trey Smith took possession of the Suozzo forged AB documents.

293. Trey Smith knew that Suozzo was a material witness.

294. Trey Smith knew then or soon thereafter that McInerney was closely associated with Brown, DeFiglio, Renna and other candidates for whom he was active in obtaining AB votes in the subject WFP primary and prior elections, including McNally and Brown.

295. Trey Smith knew that McInerney's physical appearance matched the description son.e voters gave of one of the people who had them execute AAB.

296. At all relevant times, Trey Smith had access to all of the AB documents filed in all of the 2009, 2008 and 2007 primary and general elections in Troy and Rensselaer County.

297. Thus, Trey Smith should have obtained Suozzo's testimony and forged 2008 and 2007 AB documents that alone would have been sufficient to convict McInerney, but he did not.

C. *Mason Testified re AAB that McGrath had Dickenson and Taylor Sign*

298. Mason testified that he saw voters Dickenson and Taylor sign AAB for McGrath.

299. Those voters swore that their AAB were falsely completed and AB forged.

D. *Trey Smith Gave MeNally Custody of the AB Documents, Talked to McNally About AB*

Forgery and Had NYSP DNA Reports Sent to McNally.

300. Trey Smith admitted during McDonough's prosecution that he and McNally talked about the AB forgery after McNally disqualified himself from the matter.

301. Upon information and belief, at or about the time of the *Lambertsen* hearing, Trey Smith took possession of the AB documents and put them into the custody of McNally's office.

302. On or about January 11, 2010, May 19, 2010 and November 2, 2010, the NYSP laboratory sent McNally its DNA reports regarding AB documents at the request of Trey Smith.

303. Upon information and belief, Trey Smith did those things for McNally to review and discuss that evidence with him and/or McInerney and further the scapegoat prosecution.

XIII. McGrath Publicly Proclaimed His Innocence and Called Voters Liars.

304. On or about Oct, 2, 2009, McGrath publicly claimed that he was innocent and effectively called the voters who incriminated him in the AB forgery liars.

305. Specifically, the Times Union reported that: *"[McGrath] disputed the accounts of Taylor and Dickenson that they never filled out [their AB]. He ... retrieved the [AB] ... returnable to Mason ... but ... said there was nothing improper. 'I took those [AAB] to the [BOE], and I did receive the [AB], and with certainty I brought them back to those two individuals and they did absolutely sign those. I am*

a good guy. I did nothing wrong here and I look forward to getting back on the campaign trail'."

306. However, even though McGrath was brazen enough to publicly proclaim his innocence and good moral character in the face of irrefutable voter testimony that directly incriminated him in the AB forgery he did not then take the opportunity to allege that: the AAB he filed must have been falsely completed at the BOE; he once saw McDonough trample on the rights of his *"friend-lies"* by writing false Excuses on the Taylor and Dickenson AAB; and he heard McDonough and Brown talk about names to use as AB Agents on AAB,

307. Instead, like McInerney, Brown, Dan Brown and others involved in the crimes, he got an attorney and refused to talk to the NYSP without immunity, which he soon received.

XIV. Trey Smith Told McInerney He Would Not Be Prosecuted and McInerney Was Not Concerned about Being Prosecuted until Arrested at Direction of Sr. Inv. O'Brien in 2011 without Trey Smith's Prior Knowledge.

308. McInerney forged hundreds of AB documents in 2007, 2008 and 2009 in his normal distinct and identifiable handwriting.

309. Also, at all relevant times, McInerney knew that: (a) Trey Smith was purportedly conducting an extensive investigation with assistance of the NYSP; (b) he forged hundreds of AB in 2007, 2008 and 2009 written in his normal unique handwriting that could be identified; (c) Suozzo and numerous other readily available witnesses and forged documents sufficient to prove his guilt and corroborate the testimony of

any accomplice could easily be obtained through rudimentary investigation; (d) the testimony and forged AB documents of Suozzo alone would have been sufficient to convict him; (e) DeFiglio committed AB forgery in conspiracy with him, agreed to cooperate in October 2009 and disclosed detailed facts to Trey Smith sufficient to prove his guilt on or about October and/or November 2009 and thereafter; (f) McGrath was given immunity to cooperate, had knowledge of facts that could prove his guilt and allegedly disclosed information to Trey Smith in March 2010; (g) McDonough, O'Malley and Brown knew he was given numerous AB for voters on September 14, 2009 that were forged and filed on September 15, 2009; (h) DeFiglio, Brown, McGrath, Dan Brown, LoPorto, Campana, Galuski, Renna and others had knowledge of facts that could prove his guilt; (i) Martiniano had knowledge of facts and admissions that could prove his guilt; (j) Martiniano came forward in February 2011 and could testify about his and Brown's admissions; (k) he and Brown had Renna tamper with DeFiglio to keep him from cooperating further with Trey Smith; and, (1) the matter was widely-reported and witnesses might come forward.

310. Nonetheless, soon after McInerney threatened to take everyone down with him if prosecuted, talked to McNally, hired McNally's attorney, destroyed evidence and avoided legal process, McInerney returned to his usual daily activities without any concern of being prosecuted for the hundreds of readily provable AB forgery crimes he committed in 2007, 2008 and 2009.

311. Upon information and belief, prior to October 1, 2009 and thereafter until on or about June 2011, Trey Smith told McInerney he would not be prosecuted for the AB forgery.

312. In fact, McInerney admitted at trial that Trey Smith told him in 2009, 2010 and 2011 that he would not be prosecuted.

313. McInerney also admitted that he had no concern about being prosecuted for the easily provable AB forgery he committed until he was unexpectedly arrested in July 2011 without Trey Smith's knowledge because of McDonough's actions in defense of his innocence.

314. Again, McInerney made those admissions only because his ostensible prosecution was caused by McDonough's actions and the NYSP independent investigation. McInerney's relevant trial testimony is incorporated herein by reference.

315. Still, McInerney asked McDonough several times in 2009 not to tell the authorities that he delivered the AB released on the falsified/forged AAB that Brown filed on September 12, 2009 to him, at Brown's request, with O'Malley present.

316. Upon information and belief, McInerney did so to set-up McDonough for scapegoat prosecution in furtherance of the alleged conspiracy.

XV. Trey Smith Told Brown He Would Not Be Prosecuted and Brown Was Not Concerned about Being Prosecuted until McInerney was Arrested by NYSP in 2011 without Trey Smith's Prior Knowledge.

317. Again, Brown committed AB forgery and perjury in court in front of Trey Smith.

318. Also, at all relevant times, Brown also knew that: (a) Trey Smith was purportedly conducting an extensive investigation with assistance of the NYSP; (b) he forged numerous AB documents written in his normal handwriting that could be identified; (c) he committed perjury in the *Lambertsen* hearing about the Daniel AB documents that he forged and filed at the same time that he filed the forged AAB for DeFabio, Petit and Tangredi, and the testimony and AB documents of those voters that alone would have been sufficient to convict him could have been easily obtained through rudimentary investigation and prosecution tactics; (d) Daniel and other readily available witnesses and forged documents sufficient to prove his guilt of AB forgery and perjury could easily be obtained through rudimentary investigation; (e) the testimony and forged AB documents of Daniel alone would have been sufficient to convict him; (f) DeFiglio committed AB forgery with McInerney for him, agreed to cooperate in October 2009, had knowledge of facts that could prove his guilt and cooperated in October/November 2009 and thereafter; (g) McGrath was given immunity to cooperate, had knowledge of facts that could prove his guilt and allegedly disclosed information to Trey Smith on or before March 2010; (h) McDonough, O'Malley and McGrath knew he filed numerous AAB on September 14, 2009, gave AB Agent names and Excuses to McDonough and O'Malley to write on AAB he filed for release of AB he asked McDonough to bring to McInerney that were filed on September 15, 2009 by Couch at the

request of LoPorto (all of which of which were falsified or forged); (i) DeFiglio, McGrath, McInerney, O'Malley, LoPorto, Campana, Galuski, Renna and others had knowledge of facts that could prove his guilt; (j) Martiniano had knowledge of facts and admissions that could prove his guilt; (k) Martiniano came forward in February 2011 and could testify about his and McInerney's admissions; (l) his family allegedly set a job up for DeFiglio in Vermont and he and McInerney had Renna tamper with DeFiglio to keep him cooperating with Trey Smith; and, (m) the matter was widely-reported and witnesses might come forward.

319. Nonetheless, soon after Brown prepared a press release for the WFP to falsely accuse Mirch of lying about the AB forgery, falsely testified in court about the Daniel AB documents he forged and suggested to other Dem C/O that McInerney should take a plea so that they would not be prosecuted, Brown returned to his usual activities in 2009 without any concern of being prosecuted even though he knew his crimes were readily provable.

320. Upon information and belief, prior to October 1, 2009 and thereafter until on or about June 2011, Trey Smith told Brown that he would not be prosecuted for the AB forgery.

321. In fact, Brown admitted at trial that Trey Smith told him in 2009, 2010 and 2011 he would not be prosecuted and he had no concern about being prosecuted for the easily provable elections crimes and perjury he committed until McInerney was arrested and evidence of his forgery of the Daniel, DeFabio, Petit and Tangredi AB documents was

obtained without Trey Smith's prior knowledge, because of the NYSP independent investigation. Brown's relevant testimony is incorporated herein by reference.

XVI. Trey Smith Directed and Participated in Investigation to Fabricate False Testimony to Indict and Convict McDonough in Lieu of Guilty Dem C/O.

322. Trey Smith directed and participated in the AB forgery investigation from his appointment on September 28, 2009 until McDonough's trial acquittal on December 21, 2012.

323. On or about October 14, 2009, the NYSP assigned Ogden and other investigators to assist Trey Smith in his investigation.

324. Trey Smith directed and participated in the gathering and analysis of evidence in an investigatory capacity, including the interrogation and questioning of witnesses, purportedly to follow and obtain evidence against those who committed the AB forgery.

325. The record facts prove, however, that Trey Smith directed and participated in the gathering and analysis of evidence in an investigative capacity throughout all stages of the proceedings, including the interrogation of witnesses and purported cooperating witnesses, solely to initiate and continue the scapegoat prosecution, fabricate testimony, protect the guilty Dem C/O from being prosecuted and cover-up their conspiracies.

326. Specifically, Trey Smith directed or participated in the interrogation of all known suspects, material witnesses and purportedly

cooperating Dem C/O during his investigation, including DeFiglio, McDonough, McGrath, Couch, Caird, JWelch, Aldrich, O'Malley, McInerney, Renna, Brown, Campana and Galuski.

327. Upon information and belief, however, as discussed below, Trey Smith directed or participated in the interrogation of witnesses, suspects and Dem C/O to suppress any truthful testimony that would incriminate the Dem C/O or exculpate McDonough and to fabricate false testimony that would incriminate McDonough or corroborate such false testimony.

328. Trey Smith also directed and advised the NYSP laboratory in its use of a "new" method to extract DNA from sealed AB envelopes after many costly failed attempts to obtain McDonough's DNA from numerous AB documents.

329. Trey Smith and/or Ogden also attended the laboratory when his proposed DNA extraction method was used and McDonough's DNA was allegedly found on three (3) AB envelopes, two (2) of which he is certain he never touched, which supported their already debunked preposterous prosecution theory that all the AAB were falsely completed at the BOE. The relevant emails, letters, reports and a photograph of Trey Smith wearing anti-contamination garb are incorporated herein by reference.

330. Ogden admitted at trial that Trey Smith directed and participated in the investigation throughout the case. His relevant testimony is incorporated herein by reference,

331. Trey Smith admitted during argument on a motion concerning the taking of handwriting exemplars that NYSP Investigators Ogden and Fancher had been *"working on [the] case with [him] for two years", "every step of the way"* and that he considered them *"to basically be one entity working together."* The relevant portion of the transcript of that oral application is incorporated herein by reference.

332. On August 3, 2011, after learning that the FBI and supervisory NYSP were conducting an investigation into the scapegoat prosecution and AB forgery without his knowledge, Trey Smith sent a memo to Ogden and Fancher at 5:06 a.m. in which he admitted that he was acting in the capacity and role of an investigator when he said: *"None of this has anything to do with the integrity of our investigation of McDonough."*

333. More significantly, upon information and belief, Sr. Inv. O'Brien will testify that Trey Smith, among many other things: (a) directed and participated in the investigation, interrogation of witnesses and gathering and analyzing of evidence; (b) told the supervisory NYSP in 2009, 2010 and 2011 the blatant lie that McInerney and Brown could not be prosecuted because the evidence was not sufficient to corroborate accomplice testimony; (c) did not have prior knowledge of the NYSP independent investigation done in 2011 that led to the discovery of substantial evidence sufficient to convict McInerney, Brown and Renna; (d) did not have prior knowledge of the arrest of McInerney or imminent arrest of Brown and Renna; (e) interviewed guilty Dem C/O alone after misleading the NYSP or FBI

about the same, including McInerney, Brown and DeFiglio; (f) aided McInerney in preparing the deposition he gave as part of his purported "cooperation" without the presence of the police or FBI, contrary to law enforcement practice and NYSP policy; (g) took action to prevent McInerney, Brown and others from being prosecuted or meaningfully so even after arrested or about to be by the NYSP; (h) essentially quashed a federal investigation into the AB forgery, prior election crimes and the alleged scapegoat prosecution; (i) compelled him to submit to an interrogation after Ogden indirectly caused false allegations of leaking NYSP evidence to be made against him, but then asked only about the FBI investigation of McDonough's scapegoat prosecution, whether he was a target of the FBI investigation and whether the FBI had had audio surveillance in his office or telephones; and (j) made false statements to the state court about relevant matters.

334. The fact that Trey Smith acted in an investigative capacity in gathering and analyzing evidence throughout the scapegoat prosecution of McDonough is also proven by certain memoranda, emails, depositions and other records maintained by the NYSP and/or Trey Smith concerning the matter. Those relevant documents are incorporated herein by reference.

XVII. Trey Smith Had Sufficient Evidence to Convict McGrath, DeFiglio and McInerney and All Other Guilty Dem C/O in 2009.

335. Through his investigation, Trey Smith and the NYSP (hereinafter referred to individually and/or collectively as "Trey Smith", unless specifically

delineated) gathered sufficient evidence by November 2009 to convict McGrath, DeFiglio and McInerney.

336. In regard to McInerney, the NYSP obtained the forged AB documents and testimony of more than Fifty (50) witnesses, including Suozzo whom they discovered was one of many voters McInerney had sign registration cards and/ or AAB to forge their AB documents. Those forged AAB and voter depositions are incorporated herein by reference,

337. In sum, that evidence confirmed the testimonial evidence gathered by the private investigation and irrefutably proved that all of the elections crimes were committed on the streets by McGrath, Brown, McInerney, DeFiglio and other identifiable Dem C/O.

338. That evidence was also sufficient to prove that McGrath, Brown, McInerney and DeFiglio committed the AB forgery in conspiracy with other identifiable Dem C/O.

339. Notably, all the Dem C/O involved in having voters sign AAB in September 2009 and others knew that McGrath, Brown and McInerney were the three chief culprits in the crimes.

340. All those Dem C/O also knew that Brown was closely associated with McInerney and McInerney was closely associated with DeFiglio and Renna in obtaining AB for candidates.

341. The evidence also showed the motives for the most culpable Dem C/O for the AB forgery, i.e. Brown sought to garner more votes than others to win the Council presidency; Dan Brown was Brown's brother and *de facto* campaign manager; McInerney

was Brown's most active supporter; DeFiglio and Renna were McInerney's main assistant operatives; and, McGrath was in several primaries, supported Brown and, most significantly, had openly bragged that he was going to *"beat Mirch at his own game"* and *"bring the WFP back to its members."*

342. The record facts also prove that if Trey Smith followed that evidence he would have easily and relatively quickly obtained other evidence sufficient to convict all other Dem C/O who committed the AB forgery as well as McInerney for hundreds of AB forgery and election crimes he committed in 2007 and 2008, especially if he required McGrath to provide truthful information as dictated by their purported "cooperation" agreements, but he did not.

343. Nonetheless, the record facts also prove that instead of following the evidence, Trey Smith immediately targeted McDonough for prosecution without probable cause.

344. No voter, document or fact implicated McDonough in any criminal conduct.

345. Therefore, to initiate and continue the scapegoat prosecution Trey Smith then, among many things; pretentiously adopted and pursued a preposterous prosecution theory he knew was wrong; buried crucial testimony of DeFiglio and other witnesses; did not seek readily available evidence or the truthful cooperation of any perpetrator; accepted the self-serving incredible false assertions of many suspects implicated in the crimes; immunized or gave extraordinarily favorable cooperation agreements to many suspects implicated in the

crimes; purposely ignored material evidence; and fabricated false evidence against McDonough.

346. The record facts prove that in doing so, Trey Smith purposely took a simple case of readily provable serious AB forgery that could have been successfully prosecuted at relatively minor expense and transformed it into one of the most shameful, incredibly convoluted, farcical and costly investigations and prosecutions of an innocent person for the noncriminal act of entering data on authenticated AAB.

347. The record facts prove Trey Smith did so in conspiracy with all other defendants.

348. Specifically, the record facts prove that Trey Smith: fabricated false testimony that he intended to and did present before a Grand Jury and trial juries to prosecute and convict McDonough; ignored, failed to obtain or effectively buried testimonial and documentary evidence that was and would have been sufficient to convict the guilty Dem C/O and prevented McDonough's scapegoat prosecution; give Dem C/O and others immunity, promises of no prosecution and extraordinarily favorable treatment to not tell the truth because it would have led to the conviction of the guilty Dem C/ O and prevented McDonough's scapegoat prosecution; took action to cover-up the nature and extent of the AB forgery committed and enable those crimes to be committed in the future by Dem C/O as they had been for decades; and took action to protect the guilty Dem C/O from any meaningful prosecution throughout.

349. The record facts prove that Trey Smith and Ogden purposely ignored and failed to obtain readily

available evidence that would have been sufficient to convict McGrath, Brown and McInerney, prevented the scapegoat prosecution and likely led to the discovery of other evidence sufficient to convict all the guilty Dem C/O, including the testimony of DeFiglio, Daniel, DeFabio, Petit, Tangredi, Suozzo, Martiniano and Renna.

350. The record facts show that Trey Smith could not suppress all of the overwhelming evidence against McInerney, Brown, DeFiglio, Renna and others or prosecute McDonough for the crimes they committed so he simply ignored it, told supervisory NYSP that they could not be prosecuted and boldly embarked on the fabrication and suppression of evidence to scapegoat prosecute McDonough for falsely alleged acts that are not even crimes as a matter of law.

351. The audacity of the actions of the defendants also proves their conspiracy.

XVIII. Trey Smith Did Not Obtain or Ignored Evidence of Dem C/O Guilt, Targeted McDonough for Prosecution and Sought McDonough's Incrimination.

352. The conduct of Trey Smith, Ogden, McNally and others throughout the case is direct and circumstantial evidence of the scapegoat prosecution, especially when the actions Trey Smith took to not prosecute any Dem C/O for the AB forgery that substantial irrefutable evidence proved they committed is juxtaposed with actions he took to prosecute McDonough for the non-criminal acts he did not commit, as proven by the record facts,

including his own voluminous, memos, e-mails and records.

353. The rub is self-evident: If Smith properly investigated and prosecuted the matter, all the Dem C/O would have been convicted and McDonough would not have been indicted.

354. Therefore, Trey Smith purposely did not obtain evidence and feigned mistake, ignorance or lack of for not doing so.

355. Trey Smith did not prosecute any Dem C/O until forced by action of McDonough, supervisory NYSP and FBI to ostensibly prosecute them and then he did not do so meaningfully.

356. Trey Smith never prosecuted any Dem C/O for the irrefutable perjury they all blatantly committed, especially Brown, McGrath, O'Malley, McInerney and Renna.

357. Trey Smith never prosecuted any of the Dem C/O for their conspiracy to commit the AB forgery (as alleged in Ogden's DNA application) and none of the Dem C/O would admit they acted in conspiracy even after their ostensible prosecutions were forced by McDonough, except Brown who finally did at trial, but only to recant it the next morning.

358. The reason is obvious: If Trey Smith pursued conspiracy charges or any Dem C/O admitted it, all the guilty Dem C/O would have been convicted and McDonough exonerated.

359. Also, if any of the Dem C/O admitted their conspiracy, even after ostensibly prosecuted or given immunity, their political careers would be over, but more importantly, it would have been an admission

of the conspiratorial prosecution for which they would be liable.

360. In any case, all the Dem C/O admitted that McDonough did not act in conspiracy with them to commit the AB forgery.

361. The record facts also prove that Trey Smith and Ogden did not act reasonably in the investigation and prosecution of McDonough, especially in their failure to ask Suozzo, DeFiglio, McGrath, McInerney, Renna, McDonough and other key witnesses basic questions or interview Renna, Martiniano, Daniel, DeFabio, Petit, Tangredi and others, when doing so would have led to the conviction of McGrath, Brown and McInerney and exoneration of McDonough.

362. To the contrary, the record facts prove that Trey Smith and Ogden took action so McGrath, McInerney, Brown, O'Malley, Robillard and others would *not* talk and/or tell the truth.

363. Trey Smith also ignored and did not obtain readily available evidence sufficient to convict McGrath, Brown, McInerney and others throughout his investigation.

A. *McInerney Not Identified Because Voters Showed 20-Year-Old Photograph.*

364. Trey Smith had the NYSP show voters a 20-year-old "mugshot" of McInerney that did not even grossly accurately depict his facial or physical appearance in September 2009. That photograph used for identification purposes is incorporated herein by reference.

365. Therefore, McInerney was never identified by the voters.

B. *Brown, Dan Brown or Others Not Identified No Photographs Shown to Voters.*

366. Trey Smith never showed any voter a photograph of Brown, Dan Brown or other Dem C/O known to have been involved in the solicitation of AAB.

367. Therefore, those Dem C/O were never identified by the voters.

C. *Trey Smith Did Not Obtain Testimony and Forged AB Documents of Daniel, DeFabio, Petit and Tangredi that Would Have Convicted Brown.*

368. The NYSP questioned every WFP voter for whom a relevant AB was filed except David Daniel although Brown testified falsely about his forged AB documents in *Lambertsen.*

369. Daniel was the only one of about fifty (50) WFP voters never questioned

370. Trey Smith never questioned DeFabio, Petit or Tangredi or obtained their AB that Brown forged and filed at the same time as the forged Daniel AB documents.

371. The irrefutable testimony and forged AB documents of Daniel, DeFabio, Petit and Tangredi was readily available and alone would have been sufficient to convict Brown.

372. Therefore, Trey Smith should have obtained and followed the testimony and forged AB documents of Daniel, DeFabio, Petit and Tangredi in his investigation, but he did not,

373. Additionally, if Brown was prosecuted and his truthful cooperation required, he would have disclosed other evidence sufficient to convict all the guilty Dem C/O.

374. Thus, it is clear that Trey Smith purposely did not obtain that evidence.

375. The NYSP easily obtained that evidence (except the testimony of decedent Daniel) when Sr. Inv. O'Brien directed an independent investigation in 2011 and forced Trey Smith to at least ostensibly prosecute Brown.

D. *Trey Smith Did Not Obtain Suozzo's Testimony and Past Forged AB Documents That Would Have Convicted McInerney.*

376. As stated, even though Suozzo was questioned during Trey Smith's investigation, he was not asked basic questions that would have elicited his testimony that alone would have been sufficient to convict McInerney for forging his AB documents in 2007, 2008 and 2009. Copies of Suozzo's November 2009 deposition (obtained at the direction of Trey Smith) and June 2011 depositions (obtained at the direction of supervisory NYSP without Trey Smith's prior knowledge), are attached as *Exhibit B* and incorporated herein by reference.

377. For example, Suozzo was not asked about McInerney, whether anyone enrolled him in the WFP or whether anyone asked him about AB voting (McInerney had) even though the NYSP asked about his registration card and 2009 AAB.

378. Suozzo was the only WFP voter not asked such basic questions when interviewed.

379. Trey Smith also failed to discover or record that Suozzo's 2007, 2008 and 2009 AB documents were forged in the same handwriting; i.e. McInerney's.

380. Suozzo's irrefutable testimony and forged AB documents were readily available.

381. In fact, as discussed below, Trey Smith specifically ignored evidence of McInerney's 2008 and 2007 AB forgery when Bugbee provided it to him in 2010 and again when McDonough did so in 2011.

382. As discussed below, the NYSP easily obtained the testimony and forged AB documents of Suozzo and about fifty (50) other voters that was sufficient to convict McInerney for hundreds of AB forgeries and other crimes he committed in 2009, 2008 and 2007 when Sr. Inv. O'Brien directed an independent investigation in 2011.

383. Therefore, Trey Smith should have obtained and followed Suozzo's testimony and forged AB documents that would have been sufficient to convict McInerney, but he did not.

384. Trey Smith also should have obtained and followed the testimony and forged AB documents of those many other voters for whom McInerney forged AB documents in 2009, 2008 and 2007 that would have been sufficient to convict McInerney, but he did not.

385. Additionally, if McInerney was prosecuted and his truthful cooperation required, he would have disclosed other evidence sufficient to convict all the guilty Dem C/O.

386. The fact that Trey Smith should have obtained evidence sufficient to convict McInerney from Suozzo and many other voters prior to November 2009 cannot be contested.

387. All Trey Smith had to do was to have asked Suozzo one simple question: Did you ever talk with anyone about registering in the WFP or voting by AB?

388. Thus, it is clear that Trey Smith purposely did not obtain that evidence because he did not want to convict McInerney or other Dem C/O who committed the AB forgery.

389. It is also clear that Trey Smith did not believe his own prosecution theory because, if he did, the NYSP investigators would have asked Suozzo such basic questions to obtain his testimony that would have convicted McInerney.

390. However, Suozzo's scant November 2009 deposition is further proof of the scapegoat prosecution because the obvious intended false implication of the absence of those facts is that he had no contact with any Dem C/O and, therefore, his AB documents must have been forged in the BOE, To support the scapegoat prosecution

391. In fact, however, McInerney enrolled Suozzo in the WFP, talked with him about AB voting and forged his AB documents in 2009, 2008 and 2007.

392. If Trey Smith had no knowledge about McInerney's past dealings with Suozzo or truly believed McDonough forged AB documents in the BOE, he would have asked Suozzo and all other witnesses such basic questions, but he did not.

393. In any event, Trey Smith knew that: Suozzo lived in a private residence near McInerney; McInerney was prolific at obtaining AB; Suozzo had no contact with any other Dem C/O who solicited AAB on September 12, 2009; McInerney was AB Agent on Suozzo's forged AAB; and Suozzo's AB was forged.

394. Also, DeFiglio told Trey Smith on or about October 2009 that McInerney and Brown committed the AB forgery.

395. Still, Trey Smith never asked Suozzo such simple questions about McInerney.

396. Thus, his failure to do so shows he must have known it would have led to evidence sufficient to convict McInerney, debunked the prosecution theory and prevented McDonough's scapegoat prosecution,

397. Therefore, the only reasonable inference is that Trey Smith knew from the conspiracy, likely through McNally, that it would have led to the conviction of McInerney for hundreds of AB document forgeries in 2009, 2008 and 2007, the conviction of all the other Dem C/O that committed the 2009 AB forgery and the exoneration of McDonough.

398. Moreover, McInerney has very distinctive handwriting and his unmasked print was on hundreds of AB documents filed in numerous 2007 and 2008 elections.

399. Also, Bugbee, DeFiglio and others told Trey Smith in 2009 and 2010 that it was obvious from the 2009 AB documents and primary role McInerney played in obtaining AB votes in 2007 and 2008, that McInerney committed the AB forgery.

400. Still, Trey Smith did not inspect or have those AB documents examined by a handwriting expert at anytime.

401. To the contrary, as stated below, when Bugbee and McDonough disclosed some of those AB documents to Trey Smith in 2010 and 2011 as evidence of McInerney's forgery of 2009 AB documents, he rejected that evidence out of hand.

402. However, when McDonough provided those same AB documents to supervisory NYSP in 2011 it led to the discovery of overwhelming evidence sufficient to convict McInerney for hundreds of AB document forgeries he committed in 2007, 2008 and 2009.

403. It is not plausible that Trey Smith failed to obtain that evidence other than intentionally because he needed only to have inspected the AB documents, asked Suozzo and other voters if they had contact with anyone about enrolling in the WFP or AB voting, ask DeFiglio and other Dem C/O involved in the solicitation of AAB on Sept. 12, 2009 basic questions about McInerney, had the Suozzo and other AB documents examined by a FBI or police Forensic Document Examiner ("FDE") or otherwise conducted a proper investigation.

404. Of course, if McInerney was meaningfully prosecuted he likely would have fully cooperated against all his cohorts, as warned.

405. There is no other plausible explanation for the actions of Trey Smith and Ogden but the conspiratorial scapegoat prosecution, especially because they consistently failed to obtain or ignored evidence from voters, witnesses and cooperating

defendants that would have been sufficient to convict all the guilty Dem C/O throughout the case.

406. They also consistently sought to have BOE employees, WFP operatives and Dem C/O incriminate McDonough by asking questions about whether he was involved in the AB forgery at the same time that they did *not* ask them basic questions about McInerney, Brown and others that would have led to his exoneration and the conviction of the guilty Dem C/O.

407. The consistent failure of Trey Smith to obtain readily available irrefutable evidence sufficient to convict McGrath, McInerney, Brown and the other guilty Dem C/O itself proves the conspiratorial prosecution, i.e. he knew from the relationships between himself, McGrath, Brown, McInerney, McInerney's attorney, McNally and/or others that if McDonough, Suozzo, DeFiglio, O'Malley, Renna, Martiniano, Daniel, DeFabio, Petit or Tangredi were properly questioned they would have disclosed evidence that would have convicted the guilty Dem C/O and prevented the scapegoat prosecution of McDonough.

408. The same is true concerning Trey Smith's obvious failure to require DeFiglio, McGrath, O'Malley, McInerney, Brown or Renna to provide complete truthful information as required by their purported Cooperation Agreements, as discussed.

E. *Couch, Caird and JWelch Got Attorneys and Refused to Talk Without Immunity. Trey Smith Gave Couch, Caird and JWelch Immunity and Sought Incrimination of McDonough Although*

No Reason to Suspect He was Involved in Crimes

409. JWelch and Caird, who gave Brown permission to falsely name them as AB Agents on AAB, retained attorneys and refused to talk with Trey Smith without immunity.

410. Couch, who filed AB that McInerney forged at the request of LoPorto, retained an attorney and refused to talk with Trey Smith without immunity.

411. On or about October and November 2009, Trey Smith gave Couch and Caird promises of non-prosecution in return only for their purported truthful testimony.

412. Couch and Caird gave the NYSP a sworn written deposition on October 22, 2009 and November 4, 2009, respectively. Their depositions are incorporated herein by reference.

413. Coach and Caird denied committing the AB forgery or any crimes.

414. Upon information and belief, Trey Smith on one or more occasions interviewed Couch and Caird and sought to have them incriminate McDonough in the AB forgery,

415. It is also clear from their depositions that Trey Smith sought any incrimination of McDonough possible but Couch and Caird could not do so truthfully and did not to do so falsely.

416. Still, the innocuous comments McDonough made at LoPorto's Restaurant were recorded in their depositions for the false implication of incrimination, as stated above.

417. On or about December 6, 2010, Trey Smith gave JWelch immunity in return only for his purported truthful testimony pursuant to an executed cooperation agreement.

418. JWelch denied committing the AB forgery or any crimes.

419. Trey Smith did not obtain a sworn written deposition from JWelch.

420. Upon information and belief, Trey Smith did not obtain a written deposition from JWelch because he could only have incriminated Brown.

421. Otherwise, the WFP operatives directly incriminated only Brown and LoPorto.

422. In their depositions, Couch and Caird admitted that on September 14, 2009, Brown asked for permission to falsely write their names as AB Agent on AAB and they agreed.

423. In her deposition, Couch also admitted that LoPorto handed her a newspaper folded over AB and asked her to file them but forget she got them from him. She stated LoPorto did not tell her that the AB were forged but acted furtively about the matter.

424. Couch admitted that she delivered AB to the BOE on September 15, 2009 at LoPorto's request, but again claimed that she did not know they were forged.

425. Couch and Caird also admitted that at LoPorto's Restaurant on or about September 24, 2009, Brown and Dan Brown asked them to issue a Press Release accusing Mirch of making false claims of voter fraud, Brown acted nervous and guilty and Brown said *"they were there," "it was not as bad as it*

appeared " when confronted about the AB forgery by Couch and McDonough.

426. JWelch testified at trial generally consistently with the above facts.

427. Trey Smith accepted the denials of guilt from the WFP operatives without properly questioning them and obtaining all their truthful knowledge about the AB fraud.

F. *Brown, Dan Brown, McInerney, LoPorto, Campana, Galuski and Aldrich Got Attorneys and Refused to Talk Without Immunity.*

428. McGrath, Brown, Dan Brown, McInerney, LoPorto, Galuski, Campana and Aldrich who were implicated in the AB forgery or material witnesses to the crimes, retained attorneys and refused to talk to Trey Smith or NYSP without immunity.

G. *Trey Smith Did Not Give Brown, Dan Brown and McInerney Immunity. Their Testimony Would Have Had to be Truthful and Convict Guilty Dem C/O.*

429. Upon information and belief, Trey Smith could not give Brown, Dan Brown or McInerney immunity because given the known and easily discoverable evidence, they would have had to give substantially truthful testimony that would have convicted the guilty Dem C/O and prevented the scapegoat prosecution of McDonough.

430. Instead, Trey Smith: (a) made them targets so they could assert their right to remain silent; (b) told Brown and McInerney that they would not be prosecuted; and (c) told the supervisory NYSP the blatant lie that they could not be prosecuted because

their was insufficient evidence to corroborate any accomplice testimony, including that of any voter deemed to be complicit in the crimes as a matter of law, as discussed herein.

431. Upon information and belief, Trey Smith also told Dan Brown in 2009, 2010 and 2011 that he would not be prosecuted and he was not seen as a primary target by anyone.

H. *Trey Smith Gave Aldrich Promise of No Prosecution and Sought Incrimination of McDonough Alhough No Reason to Suspect He was Involved in Crimes.*

432. Aldrich, a close associate of LoPorto who assisted McInerney and Dan Brown in getting voters to sign AAB on September 12, 2009 and was named the AB Agent on nineteen (19) falsified or forged AAB for which AB were forged by AB McInerney and filed by Couch at LoPorto's request, retained an attorney and refused to talk to Trey Smith without immunity.

433. On or prior to November 13, 2009, Trey Smith gave Aldrich a promise of non-prosecution in return only for his purported truthful testimony.

434. On November 13, 2009, Aldrich gave the NYSP a sworn written deposition. His deposition is incorporated herein by reference.

435. Aldrich denied committing the AB forgery or any crimes.

436. Trey Smith accepted Aldrich's denial of guilt without properly questioning him and obtaining all of his truthful knowledge about the AB fraud.

437. Upon information and belief, Trey Smith on one or more occasions interviewed Aldrich and sought to have him incriminate McDonough in the AB forgery.

438. It is also clear from his deposition that Trey Smith sought any incrimination of McDonough possible, but Aldrich could not do so truthfully and did not to do so falsely.

I. *LoPorto, Galuski and Campana Refused to Falsely Incriminate McDonough.*

439. Upon information and belief, on occasions on or about October or November 2009 and thereafter, Trey Smith sought to have LoPorto, Galuski and Campana incriminate McDonough for immunity but they could not do so truthfully and did not to do so falsely.

440. Upon information and belief, Trey Smith considered LoPorto, Galuski and Campana to have played minor, if any, culpable roles in the AB forgery.

441. Upon information and belief, Trey Smith intended to scapegoat prosecute LoPorto if he could not coerce McDonough into pleading guilty before indictment because he made clear his intent to defend his innocence and expose the scapegoat prosecution if indicted.

J. *Leonard and Mason Refused to Gave Written Depositions*

442. Richard Mason, friend and campaign helper of McGrath, refused to talk to the NYSP about the matter even though he testified at *Lambertson* hearing.

443. Michael Leonard, a relative and campaign helper of McGrath, told the NYSP he knew nothing about the AB forgery and refused or was not asked to give a deposition.

444. Trey Smith accepted Leonard's word without questioning him about the AB documents he filed in 2009 and past years (for the same voters and/or with similar Excuses) or taking a written statement from him.

K. *Donald Cunningham, Louis Schneider and Sought Incrimination of McDonough Although No Reason to Suspect He was Involved in Crimes.*

445. City Employees Donald Cunningham and Louis Schneider were interviewed by NYSP and gave sworn written depositions on November 24, 2009. Their depositions are incorporated herein by reference.

446. The NYSP questioned those two men about McDonough to obtain any evidence that might incriminate him, specifically with respect to any dealings with McInerney.

L. *Trey Smith Asked BOE Employees about McDonough and AB Process. Trey Smith Sought Incrimination of McDonough Although No Reason to Suspect He was Involved in Crimes.*

447. On or about November 10, 2009, Trey Smith interviewed most BOE employees.

448. All BOE employees were interviewed at the BOE, except McDonough.

449. Trey Smith did not give *Miranda* warnings to any BOE employee or take the sworn deposition of any BOE employee, except McDonough.

450. Upon information and belief, Trey Smith did not take depositions of the other BOE employees so O'Malley did not have to give a sworn statement because: O'Malley already got the word and joined the conspiracy to prosecute McDonough; O'Malley would give fabricated false testimony against McDonough only if needed because he was nervous by nature; and O'Malley's role at the time was to not disclose the truth that would directly incriminate McInerney, Brown and McGrath in the AB forgery and be sufficient to convict Brown for his perjury before the State court and Brown and McGrath later for perjury before the Grand Jury.

451. Upon information and belief, Trey Smith purposely did not take a deposition from any BOE employee except McDonough because it would have required O'Malley to give a false statement in furtherance of the conspiratorial prosecution and exposed the scheme at that time.

452. The record facts prove that O'Malley's role at that time was to not talk prior to Grand Jury, but give fabricated false testimony as needed at Grand Jury and trial to initiate and continue the scapegoat prosecution.

453. All of the BOE employees denied any knowledge of the AB forgery.

454. Commissioner Bugbee and other employees of the BOE told Trey Smith that it was lawful BOE practice to: (a) assist voters and their agents by writing data that the voters gave onto AAB so it

could be filed; and (b) release AB to voters, voters' agents or persons designated by a voter or a voter's agent if an AB Agent is named on an AAB, even if not the AB Agent.

M. *O'Malley Did Not Tell the Truth That Would Have Incriminated Brown and McInerney But Did Not Falsely Incriminate McDonough in 2009.*

455. O'Malley was also a political operative with strong allegiance to Chair Wade known to have solicited AB in his town on behalf of Democrats (although on a smaller scale than *McInerney)* and was appointed to his BOE position by Chair Wade.

456. It was discovered by McDonough during the defense of the scapegoat prosecution that O'Malley had filed AAB for certain voters from the Town of Hoosick over the years, including an unusually high number in 2009 who had the same excuse of being *"home recovering from a stroke"* for the same election.

457. O'Malley was a member of the Town Board when Trey Smith was appointed its attorney through the efforts of a mutual friend and past political associate. He also had direct and indirect association with McNally and McInerney.

458. When questioned by Trey Smith and/or Ogden in 2009 or 2010 he did not disclose those facts that would have directly incriminated Brown and McGrath

459. Significantly, when O'Malley was questioned by Trey Smith in the fall of 2009, he did not disclose the truth about what happened on September 14, 2009; i.e. he sat across a desk from Brown in McDonough's office and wrote Excuses on eight (8)

AAB that Brown said voters gave while McDonough helped McGrath; and, later that day was with McDonough when he delivered all the AB released on the AAB Brown filed which were forged and then filed the next day by Couch for LoPorto.

460. Also, O'Malley did not at that time falsely claim that he heard McDonough tell McInerney that he *"had two HVCC students"* who *"owed him a favor"*, as he did later.

461. O'Malley did not at that time falsely report that McDonough called him into his office and made him write false Excuses on AAB when no one else was present, as he did later.

462. The fact that O'Malley remained silent instead of then disclosing the truth that would have incriminated Brown and McInerney or made false allegations to incriminate McDonough, as well as the key role he later played in falsely testifying in the Grand Jury and trials, proves that he joined the conspiracy to initiate and continue the scapegoat prosecution at its inception or soon thereafter, as do his other acts and testimony, as discussed,

463. O'Malley did not give a deposition or confirm what happened in McDonough's office on September 14, 2009 when questioned again by Ogden in December 2009, specifically about walking to McInerney's office with McDonough.

464. Furthermore, O'Malley admitted at trial that on December 16, 2009 he lied to Ogden about what happened when McDonough gave McInerney the AB released on the AAB Brown filed on September 14, 2009.

465. Even after McDonough told Ogden that O'Malley was with him when he gave McInerney the AB released on the AAB Brown filed on September 4, 2009, O'Malley did not give a written statement when he falsely told Ogden on that date that he *"did recall walking with McDonough to the City Clerk's office ... could not be any more specific ...he waited in the lobby and could not remember if McDonough had an envelope with him."*

466. Trey Smith never asked O'Malley about what happened in McDonough's office on that date or about AAB or the actions of Brown or McGrath concerning the filing of AAB.

467. O'Malley allegedly told Trey Smith and the NYSP several times in 2009 that he did not have any knowledge about the AB forgery.

468. At trial, Trey Smith asserted that O'Malley declined to give a written statement.

469. In any event, O'Malley was a key participant in the scapegoat prosecution because he did not at anytime tell the simple truth about what happened on Sept 14, 2009 that would have proven Brown's crimes and perjury, proven McGrath's false accusations and perjury and prevented the scapegoat prosecution but later testified falsely to protect McInerney, Brown and McGrath and initiate the scapegoat prosecution against McDonough.

470. Instead, O'Malley lied about everything and falsely accused McDonough so that he did *not* incriminate Brown or McGrath.

471. Later, O'Malley also unilaterally destroyed AAB and AB filed in 2007 elections after McDonough and Bugbee began to discover and disclose those that

McInerney and Renna forged in past elections to the FBI and supervisory NYSP as evidence of their 2009 crimes. A June 10, 2011 email from Trey Smith to O'Malley's attorney in which he adds: *"of course, this could fail into a known pattern of doing as he is told", is* incorporated herein by reference

N. *McDonough Twice Questioned at NYSP Station After Miranda Warnings.*

472. In contrast, Trey Smith had Ogden interview McDonough twice at the NYSP station, gave him *Miranda* warnings and took a sworn written deposition on both occasions, i.e. November 19, 2009 and December 7, 2009.

473. Ogden directed the interviews and asked him about McInerney, focused his questioning on forged AB and McDonough's delivery of AB to McInerney on September 14, 2009 but did not ask him anything about AAB or the filing of AAB by McGrath, Brown, McInerney, DeFiglio or Renna or the AAB Brown filed on Sept. 14, 2009; or, the completion of AAB for McGrath, Brown or any other voter agent.

474. He was cooperative and gave two written depositions.

475. McDonough disclosed that on September 14, 2009 he took the AB issued on the AAB Brown filed that day to McInerney at Brown's request and O'Malley accompanied him.

476. McInerney asked McDonough several times in the fall of 2009 not to talk to the NYSP or tell them that he got the AB released on the AAB Brown filed on September 14, 2009.

477. At the same time, Chair Wade told McDonough that he should get an attorney and not talk to the NYSP.

478. Nonetheless, McDonough remained a cooperative witness, would have testified truthfully if called as a witness and was not dissuaded from talking to the NYSP.

479. At trial, O'Malley testified that he is a nervous person afraid of his own shadow.

480. Therefore, it is also obvious by his conduct alone that he participated in the conspiracy from the inception or soon thereafter and throughout the prosecution, as discussed.

O. *Martiniano and Renna Were Not Interviewed. Their Testimony Would Have Led to Conviction of McInerney, Brown and Likely All Guilty Dem C/O.*

481. Trey Smith and Ogden knew that Martiniano was involved in the AB forgery or a material witness and close associate of LoPorto, but not a supporter of McInerney or Brown.

482. Trey Smith knew that Renna was a longtime operative, close associate of McInerney and involved in the AB forgery or material witnesses to the crimes.

483. Of course, McInerney and Brown knew that Martiniano and Renna had personal knowledge of facts that could directly incriminate them in the subject crimes and that they would likely be arrested and/or prosecuted if either one talked to the NYSP.

485. Additionally, Martiniano would have provided testimony about the admissions Brown and

McInerney made to him that would have prevented the scapegoat prosecution.

486. However, Trey Smith did not interview Martiniano or Renna in 2009 or 2010.

487. Martiniano and Renna were the only Dem C/O involved in the effort to obtain signed AAB that were not questioned by Trey Smith or the NYSP during his investigation.

P. *Trey Smith Ignored Forged AAB Bugbee Provided that Alone Was Sufficient to Lead to the Conviction of McInerney for AB forgery in 2009, 2008 and 2007.*

488. In 2009, Bugbee and BOE employees Mary Sweeney and Bonnie Bec[illegible] told Trey Smith and/or Ogden that there was no reason to believe McDonough forged any AB document and, in response, he implied that they were acting in complicity with him.

489. In 2009, Bugbee and other BOE employees told Trey Smith and/or Ogden that it was lawful BOE practice to: (1) assist voters/agents by writing data voters gave onto AAB so it could be filed; and (2) release AB to voters/agents, even if not an AB Agent.

490. In 2009 and/or 2010, Bugbee told Trey Smith and/or Ogden that it was obvious from the 2009 forged AB documents and voter statements that McGrath, McInerney and other Dem C/O committed the crimes.

491. On or about November 15, 2010, in response to a voter's complaint of forgery and illegal voting at the polls in 2009, Bugbee discovered and provided to *Trey Smith* and the NYSP about twenty (20) AAB

filed in 2007 and 2008 elections that appeared to have been forged in the same unique handwriting, which he told them he then knew to be McInerney's print. Those 2007 and 2008 AAB are incorporated herein by reference.

492. The BOE records showed that it was actually her voter registration card and 2007/2008 AAB that were forged.

493. At the time, Bugbee told Trey Smith that the unique handwriting on the AAB was that of McInerney (*"its Mac"*), and requested proper criminal action.

494. Upon information and belief, Trey Smith told Bugbee that the NYSP were not interested in the matter and he had no authority to prosecute any past election crimes.

495. Thus, he avoided obtaining that evidence of McInerney's past AB forgery relevant to the 2009 AB forgery that would have led to McDonough's exoneration. I

496. If followed, that evidence would have led to voter testimony sufficient to convict McInerney for AB forgery he committed in 2007, 2008 and 2009.

497. In fact, those documents showed that McInerney also filed AAB for the same voters in more than one year; i.e. he had a so-called "stable" of voters for whom he forged AB.

498. Trey Smith and Ogden ignored that evidence and did not obtain the testimony of any of those voters that would have led to McInerney's conviction.

499. Later in 2010, McDonough gave Trey Smith those and/or other 2007 and 2008 AAB that appeared

to have been partially or entirely written in the handwriting of McInerney or Renna also as additional proof of his AB forgery in 2009. Those 2007 and 2008 AAB, which McDonough also later provided to the supervisory NYSP, are incorporated herein by reference.

500. Trey Smith and Ogden again ignored those past AB documents that would have led to the discovery of overwhelming evidence sufficient to convict McInerney for AB forgery he committed in 2007, 2008 and 2009 on the basis that he had no authority to pursue those crimes and the NYSP were "not interested" in the evidence.

501. Those documents as well as the testimony of voters to prove McInerney's guilt in 2009 and past years could have been easily obtained by rudimentary investigation.

502. Trey Smith also could have had the scope of his purported authority perfunctorily expanded as he later did to protect McInerney from federal or state prosecution for those crimes when the supervisory NYSP acted on that evidence.

Q. *Renna Tampered with DeFiglio for McInerney and Brown with Impunity,*

503. On or about August 2010, Renna called DeFiglio and told him that McInerney wanted him to know that if he did not talk to the NYSP again it would all be over soon and "they" would get him an attorney and *"it would all go away."*

504. Renna also told DeFiglio that "they" wanted him to know that Brown's family had a job lined-up for him in Vermont and he should move there,

505. DeFiglio disclosed the tampering and the NYSP arranged to record a telephone conversation but Renna did not return DeFiglio's calls or talk to him on the telephone again.

506. Trey Smith did not arrest or prosecute Renna for the witness tampering and never sought to question Renna about it, the AB forgery or his participation in gathering AAB or AB.

507. If obtained, Renna's truthful testimony would have been sufficiently corroborated by the substantial evidence already obtained and alone enough to convict McInerney and therefore likely lead to the conviction of all other guilty Dem C/O.

508. Those facts further corroborated the guilt of McInerney and Renna, but it was ignored by Trey Smith and Ogden relative to any prosecution against them.

509. The fact that McInerney, Brown and Renna had the audacity to tamper with DeFiglio during the investigation further proves they were in conspiracy with the prosecutor.

XIX. Trey Smith Adopted Purported Nonsensical Prosecution Theory Debunked by Common Sense, Evidence and DeFiglio in October/November 2009.

510. The record facts prove the following.

511. Almost immediately after his appointment (October 2009) Trey Smith began to seek evidence upon which to base and initiate a prosecution of McDonough.

512. Thereafter, throughout his investigation, Trey Smith and Ogden meticulously analyzed the

testimonial and documentary obtained in effort to find any theoretical basis for the prosecution of McDonough, however, nefarious, malicious and silly.

513. On or before November 6, 2009, Trey Smith and Ogden purportedly adopted a patently preposterous theory for the prosecution of McDonough that no objectively reasonable prosecutor would have considered, adopted or pursued based on the evidence.

514. Then, Trey Smith and Ogden questioned witnesses to obtain any evidence in support of that purported theory of prosecution, fabricated false evidence against McDonough to initiate and continue his prosecution based on it and blindly pursued his prosecution without probable cause even though it was debunked by DeFiglio, disproved by the evidence, contrary to common sense and absent of probable cause.

515. However, it is clear that the theory was merely a ruse to give an appearance that Trey Smith was supremely incompetent or misguided in the exercise of his discretion and simply initiated and continued an ostensibly proper but weak prosecution of McDonough.

516. In simplest terms, the preposterous prosecution theory was that Dem C/O defrauded numerous voters into signing AAB so they could file them to obtain and falsely vote AB for Democrat candidates, regardless of whether they were eligible to vote by AB or would do so, which they had to file in AB envelopes they also had to forge, but purposely did not enter false AB Agents and Excuses on any of those AAB they knew could not be filed for release of

the AB unless completed, so that McDonough could do it in *"the finishing process"* at his BOE *"forgery factory"* under the watchful eyes of partisan opposing political Party employees.

517. The record facts show that the purported prosecution theory was pure nonsense and known by Trey Smith and Ogden all along to be absurd.

518. No Dem C/O ever alleged that they purposely did not complete the AAB they had voters sign to obtain and vote their AB so that McDonough could falsely complete them, even after he forced their ostensible prosecutions and Trey Smith gave them immunity or favorable dispositions to incriminate him.

519. To the contrary, Brown, McInerney and others also admitted at trial that the theory was wrong.

520. In any case, there never was any evidence, allegation or reasonable suspicion that McDonough or anyone at the BOE forged any elections documents or operated a *"forgery factory"* solely for the *"finishing"* of incomplete AAB solicited by Dem C/O to forge AB.

521. Moreover, Trey Smith and Ogden knew that the object crime was the false voting of AB and the related falsification or forgery of AAB and AB envelopes were integral to them.

522. That fact could not have been missed by any reasonable officer investigating this matter. Thus, the entry of delivery agent names and excuses on AAB should never have been on the prosecution agenda at anytime, especially because almost all of the AAB in question were actually or ostensibly signed by the voters.

523. Furthermore, it was common knowledge by November 2009 that the AB forgery was committed by Dem C/O, primarily McGrath, Brown and McInerney and their helpers.

524. Nonetheless, Trey Smith obtained McDonough's indictment and sought to convict him by conspiratorially fabricating false testimony in support of that theory even though after it was specifically debunked by DeFiglio on or before November 6, 2009, as discussed.

525. Again, at the same time, Trey Smith ignored, failed to gather and/or follow the evidence and investigative leads sufficient to convict the Dem C/O who defrauded voters, forged AB votes, forged voter signatures and falsely filed AB documents.

526. Later, Trey Smith conspiratorially fabricated the false testimony of McGrath, Brown, O'Malley, Ogden, McInerney, Renna, Ogden and Robillard to initiate and continue it.

527. Furthermore, under State law, the innocuous entry of data onto an AAB after it is ostensibly signed by the voter has nothing to do with its authenticity and is not forgery.

528. Clearly, therefore, the theory was adopted solely to obtain the primary objectives of the conspiratorial scapegoat prosecution by shifting the focus of any investigation and prosecution away from the conspiratorial AB forgery committed by the Dem C/O onto the alleged non-criminal act of entering false information on authenticated and ostensibly authenticated AAB (signed) allegedly committed by one clerical person acting alone.

XX. Trey Smith Asked DeFiglio about McDonough. DeFiglio Admits AB Forgery and Debunks Prosecution Theory. Trey Smith Buried Detailed Facts DeFiglio Disclosed against McInerney in Handwritten Notes and Ignored Substantial Evidence Against Dem C/O.

529. On or about October 2009, DeFiglio agreed to cooperate with Trey Smith *pro se*.

530. Upon information and belief, on or about October and/or November 2009 and thereafter, Trey Smith and/or Ogden interviewed DeFiglio.

531. Trey Smith did not require DeFiglio to enter into a written cooperation agreement.

532. On or about November 6, 2009, DeFiglio gave a sworn written deposition.

533. However, in essence, only general facts and speculation about the AB forgery were recorded by Trey Smith and the NYSP in DeFiglio's deposition.

534. In substance, the following relevant admissions were recorded in DeFiglio's deposition: (a) the AB forgery was committed by the Dem C/O as part of a scheme to falsely vote AB of public housing voters; (b) Brown and McInerney were the primary culprits; (c) he assisted McInerney on a few occasions in September 2009; (d) McInerney had possession of all the signed but incomplete AAB that were obtained; and (e) the same scheme of falsely voting AB was perpetrated by DeFiglio, McInerney, Retina and other Dem C/O for more than 25 years. A copy of his deposition is attached as *Exhibit C* and incorporated herein by reference.

535. DeFiglio's deposition contains few specific facts about the AB forgery and no specific evidentiary facts and admissions about the criminal acts of DeFiglio, McInerney, Brown and the other Dem C/O who he admitted committed the AB forgery in 2009 and/or twenty-five (25) years prior thereto, including 2008 and 2007 elections.

536. It would appear from his deposition that Trey Smith and Ogden did not ask DeFiglio rudimentary questions about McInerney, Brown, other Dem C/O, the AB forgery and the 25 year scheme of Dem C/O that any reasonable investigator would have asked such a cooperating perpetrator in order to obtain readily available evidence.

537. It is obvious that Trey Smith and Ogden did not ask DeFiglio basic questions that would have resulted in his disclosure of more evidence against McInerney and other Dem C/O.

538. On the other hand, it is clear from DeFiglio's deposition that Trey Smith and/or Ogden questioned him specifically about McDonough and Trey Smith's purported prosecution theory even though there was no reason to suspect McDonough was involved in any crime.

539. It is also clear that Trey Smith and Ogden sought any incrimination of McDonough from DeFiglio because his rank speculation that McDonough *"had to know"* about the AB forgery is recorded in his deposition instead of specific evidentiary facts concerning the AB forgery committed by McInerney, Brown and/or any other Dem C/O in conspiracy.

540. DeFiglio's deposition makes clear that Trey Smith and Ogden did not ask him many basic questions that would have resulted in more evidence against McInerney and others.

541. For example, Trey Smith and Ogden did not elicit from DeFiglio many particular facts about the AB forgery, or 25-year AB forgery scheme despite his knowledge, willingness and ability to have provided the same against McInerney and Brown.

542. In fact, Ogden testified at trial that no attempt was made by Trey Smith or the NYSP to obtain any specific evidence from DeFiglio about the 2009 or prior AB forgery or the identity of those Dem C/O who had committed those when he gave his statement or thereafter.

543. In fact, however, only because McDonough went to trial, Trey Smith was required to disclose his own handwritten notes that showed DeFiglio had actually disclosed substantial detailed evidentiary facts about the AB forgery and McInerney on one or more occasions when interviewed by Trey Smith and/or Ogden on or about October/November 2009.

544. Trey Smith effectively buried that crucial testimonial in handwritten notes kept in his file and disclosed as Brady or Rosario material just before trial.

545. DeFiglio testified at trial that he was questioned by Trey Smith and Ogden but also by Trey Smith alone on one or more occasions.

546. In substance, DeFiglio disclosed to Trey Smith and/or Ogden that: (a) he and Galuski helped McInerney fraudulently obtain signed AAB from public housing voters before and on September 12,

2009; (b) they had voters sign incomplete AAB; (c) McInerney or other Dem C/O were going to falsely complete the AAB that voters signed; (d) he identified specific voters for whom McInerney or other Dem C/O were going to totally forge an AAB; (e) they were going to falsely complete or forge those AAB so that they could obtain and falsely vote AB; (f) he identified those voters who signed AAB that were falsely completed; and (g) he identified those voters for whom an AAB was totally forged.

547. Those detailed evidentiary facts directly incriminated McInerney in the forgery of specific AB documents for identified voters on specific dates.

548. More specifically, Trey Smith recorded in his notes that DeFiglio disclosed that on several occasions *before September 10, 2009*, he, Galuski and McInerney sought to have AAB signed by the following identified voters (13) for whom AAB were falsely completed or forged: (1) Amey; (2) Berrios; (3) Flores; (4) Gonzalez; (5) Ponce; (6) Rouse; (7) A. Santiago; (8) Torres; (9) Vasquez; (10) B. Ward; (11) M. Ward; (12) Washington; and, (13) Welling.

549. Trey Smith also recorded with respect to those AAB that DeFiglio: (a) identified five (5) that were *"totally forged"*; and (b) stated that *"it was unspoken they [the voters] would not get [AB] back."*

550. BOE records show that Aldrich was the named AB Agent on all of those (13) falsified and forged AAB and that they were filed at the BOE on September 10, 2009.

551. Nonetheless, McDonough was indicted for the forgery of those (13) AAB that DeFiglio essentially

admitted McInerney and/or other Dem C/O falsified or forged,

552. At trial, McInerney admitted that he does not recall which one of the other Dem C/O he had file those AAB but the record facts support the inference that it was Dan Brown.

553. Trey Smith also recorded in his notes that DeFiglio disclosed that again on September 12, 2009, he, Galuski and McInerney sought to have AAB signed by sixteen (16) specifically named voters for whom AAB were falsely completed or forged.

554. Trey Smith also recorded with respect to those (16) AAB that DeFiglio: (a) identified three (3) that were *"totally forged"* (because a voter had moved); and (b) stated he *"did not know but probably heard someone say at meeting a Griswold Heights 'just get them to sign [the AABJ"*' but *"does not recall specific instructions not to fill in the [AB Agent] or [Excuse] fields [on the AAB]."*

555. Trey Smith also recorded with respect to those AAB that DeFiglio disclosed *"McInerney would say if it appeared a voter moved ... that's ours"*, meaning that McInerney or another Dem C/O would totally forge that voter's AAB and AB.

556. BOE records identify which Dem C/O was the named AB Agent on each of those (16) falsified and forged AAB and that they were filed at the BOE on September 12, 2009.

557. McDonough was indicted for the forgery and/or criminal possession of those (16) AAB that DeFiglio essentially admitted McInerney and/or other Dem C/O falsified or forged.

558. Those detailed evidentiary facts were alone sufficient to convict McInerney and corroborated by substantial voter testimony and forged AB documents.

559. If followed, detailed evidentiary facts would have led to the discovery of other evidence sufficient to convict McInerney, Brown and all the other guilty Dem C/O.

560. However, Trey Smith and Ogden effectively buried those detailed evidentiary facts about the AB forgery and McInerney acts and admissions by recording them in notes which he kept in his file rather in his deposition or a report made part of the NYSP records, reviewed by supervisory NYSP and timely disclosed to McDonough in pre-trial discovery; contrary to good law enforcement practice and NYSP policy. A copy of Trey Smith's handwritten notes are attached as *Exhibit D* and incorporated herein by reference.

561. In any case, the detailed facts DeFiglio disclosed in 2009 were not used to prosecute McInerney, even after Renna tampered with him for McInerney and Brown in 2010.

562. The record fact prove that the testimonial evidence DeFiglio disclosed to Trey Smith was corroborated by substantial voter testimony and forged AB documents that was independently sufficient to convict McInemey. If followed, that evidence would have led to the discovery of more evidence sufficient to convict him and all the guilty Dem C/O.

563. DeFiglio testified at trial that he told Trey Smith and Ogden in 2009 and 2010, among other

things, that: (a) the AB fraud was committed by the Dem C/O, primarily McInemey and Brown; but not by anyone in the BOE; (b) the object crime was the false voting of AB; (c) the Dem C/O committed the AB forgery by having voters sign an AAB that they then completed with false Excuses and AB Agents so they could obtain and vote an AB for Democrats; (d) Dem C/O knew the AB process and related BOE practices, especially that AAB had to be completed with an Excuse and AB Agent to be filed before an AB for a voter could be obtained and voted; and (e) Dem C/O had voters sign but not complete an AAB so they could write a false Excuse and AB Agent on them and obtain and falsely vote their AB *"the right way"* without risk that the voters were not eligible to vote by AB or would not vote for Democrats.

564. DeFiglio also testified that Trey Smith and Ogden asked about their prosecution theory against McDonough when they questioned him on or before November 6, 2009.

565. More significantly, DeFiglio testified that when Trey Smith and Ogden asked him about their prosecution theory he told them it was wrong and made no sense.

566. DeFiglio testified that he told Trey Smith and Ogden in 2009 and 2010, among other things, that: (a) the AAB and AB were falsified and forged by McInerney, Brown and the Dem C/O; (b) the object crime was AB forgery and the "game" was to get voters to only sign AAB so they could be falsely completed and AB obtained and voted *"the right way"* regardless of whether a voter was eligible to vote by AB; (c) the AB fraud was committed by the Dem C/O

mainly McInerney and Brown; and, (d) public housing voters were targeted for AB forgery because they would be less likely to know, care or complain about it.

567. DeFiglio testified that Trey Smith and Ogden ignored what he told them because they *"did not want to hear if* and *"would not listen. "*

568. Even McGrath, McInerney and Brown admitted at trial that the theory was wrong.

569. Again, it was known by November 2009 and common sense dictated that the false completion or forgery of AAB was integral to their false voting of AB.

570. It was also common knowledge among the Dem C/O that the AB forgery was committed primarily by McInerney, McGrath, J. Brown, D. Brown, DeFiglio and Renna.

571. DeFiglio also testified that he would have told Trey Smith and Ogden everything he knew about the AB forgery, but *"they did not ask'* and *"they did not want to know. "*

572. The record facts prove that all of DeFiglio's testimonial evidence about the AB forgery was corroborated by substantial testimony and forged AB documents and alone sufficient to convict McInerney and Brown.

XXI. Trey Smith Misled Supervisory NYSP throughout Investigation with Blatant Falsehood that McInerney and Brown Could Not be Prosecuted

573. At the same time, from 2009 to 2011, Trey Smith misled supervisory NYSP by telling them the

blatant falsehood that McInerney and Brown could not be prosecuted because under applicable State law the evidence obtained was not legally sufficient to corroborate the testimony of DeFiglio or any accomplice or co-conspirator to conviction them.

574. In truth, the substantial testimonial and documentary evidence obtained was more than legally sufficient to corroborate the testimony of DeFiglio or any accomplice or coconspirator and convict McInerney and Brown as a matter of state law.

575. In truth, that evidence was sufficient to convict McGrath, Brown, McInerney and other Dem C/O from the beginning, even without the testimony of DeFiglio or any accomplice.

576. In 2011, McDonough exposed Trey Smith's blatant falsehood in defense motions and took other action that caused the FBI and NYSP to take action that forced the ostensible prosecutions of McInerney, Brown and Renna and the disclosure of their testimony that further exposed the conspiratorial prosecution.

XXII. Trey Smith Played "Bad Cop" and Threatened to "Fuck" McDonough to Set-up Initiation of Conspiratorial Scapegoat Prosecution.

577. In the fall 2009, McInerney asked McDonough several times not to talk to the NYSP or tell them he got the AB for the AAB Brown filed on Sept. 14, 2009.

578. At the same time, Chair Wade told McDonough that he should get an attorney and not talk to the NYSP.

579. Still, McDonough remained a cooperative witness and had no concerns about it.

580. That changed only when Trey Smith denigrated his deceased father and threatened him to prosecute him for the AB forgery.

581. On January 27, 2010, McDonough returned to the NYSP station for further questioning by Trey Smith. The relevant facts of the interview are set forth in McDonough's affidavit dated February 24, 2011, which is incorporated herein by reference.

582. At that time, Trey Smith began the interview by telling McDonough that his desire to be the county District Attorney was crushed when his father, the Democratic Party Chair, *"turned his back on me"* and *"wouldn 't even talk to me"* about that possibility.

583. Trey Smith told McDonough that he was not happy about the experience and, as Ogden walked into the room, said *"in finishing what I was talking about, I think you can now see how it is ironic that now we are here, I am Special Prosecutor and I have the ability to make you King for the Day"* and was giving McDonough the opportunity to tell *"everything"*, but warned that he was *"a very busy person"* who did not have *"any time to waste."*

584. When McDonough began to discuss what he previously told Ogden, Trey Smith interrupted and stated: *"I am a very busy man and I want you to tell me all about what went on with yon and your friends in your Forgery Factory"*

585. Trey Smith told McDonough he was going to "fuck" him like his father did him in the past and "if

you don't tell me anything more, the next time we speak will be at a Grand Jury."

586. The record facts show that Trey Smith had no legitimate reason or purpose for meeting with McDonough, especially without counsel present.

587. It is most evident from his failure to give Miranda warnings and demand for a confession without any regard for McDonough's Fifth or Sixth Amendment rights.

588. It is also obvious from the fact that he did not ask McDonough about any allegations, witness statements, documents or other evidence.

589. Of course, McDonough then acquired counsel and a deep distrust of Trey Smith.

590. Trey Smith later affirmed that he played a "bad cop" and threatened McDonough to scare him into giving information against McInerney. Those portions of Trey Smith's affirmation dated March 11, 2011 relevant to the matter are incorporated herein by reference.

591. However, the record facts and common sense belie Trey Smith's claims.

592. In the first place, Trey Smith already had obtained substantial evidence sufficient to convict McGrath and DeFiglio and, if followed, it would have led to the discovery of other evidence sufficient to convict McInerney, Brown, Dan Brown, Renna and all the Dem C/O.

593. Also, McDonough was a cooperative relatively minor fact witness, there was no reasonable basis to suspect that he had any substantive knowledge about the AB forgery and Trey Smith and Ogden did

not previously ask him or others basic questions that would have elicited relevant facts about the acts of McInerney, Brown and others.

594. Otherwise, as a past prosecutor and State Supreme Court law clerk with more than 25 years experience in criminal practice, Trey Smith could not have expected McDonough to confess to being the ring-leader of a *"forgery factory"* for the completion of AAB that Dem C/O had voters sign so they could then obtain and falsely vote their AB.

595. Nor could Trey Smith have expected that any person would believe he sought to have McDonough provide information against McInerney by threatening to prosecute him unless he confessed to crimes he did not commit.

596. In addition, as discussed, Trey Smith and Ogden had already purposely ignored or failed to obtain testimony, forged AB documents and other evidence that would have been sufficient to convict the Dem C/O who committed the AB forgery, especially McInerney.

597. Also, Trey Smith told McInerney and Brown that they would not be prosecuted and the supervisory NYSP that they could not be prosecuted.

598. Moreover, McGrath's conviction was *a fait accompli* and he could have been offered a plea deal for truthful information against his cohorts Brown, McInerney and the others.

599. Still, Trey Smith did not first prosecute McGrath and then offer him a plea deal in return for truthful information against Brown, McInerney and his other cohorts.

600. Also, Trey Smith did not return to DeFiglio or any cooperating perpetrator for more information that he was willing to provide against the Dem C/O.

601. Instead, Trey Smith threatened to "fuck" McDonough unless he confessed to the crimes the substantial evidence already obtained proved was committed by McInerney, McGrath, Brown and others in order to scare him into giving information against McInerney, whom he already told he was not going to prosecute, and, did not prosecute.

602. McDonough was also merely a non-essential fact witness who was cooperative and not accused, suspected or implicated in any crimes.

603. Lastly, Trey Smith could have followed the known evidence and obtained readily available evidence sufficient to convict McInerney, Brown, Renna and all the guilty Dem C/O just as Sr. Inv. O'Brien did in 2011 after McDonough defended his innocence, as stated.

604. On the other hand, McGrath, Brown, McInerney and O'Malley knew that McDonough would testify truthfully and incriminate them, especially concerning their actions on September 14, 2009, if he was properly questioned or called to testify.

605. Trey Smith knew there was no evidence upon which to obtain McDonough's indictment, especially if his truthful testimony was presented to the Grand Jury, as alleged.

606. Therefore, upon information and belief, Trey Smith threatened McDonough to keep him from testifying in the Grand Jury and avoiding indictment and incriminating others.

607. Upon information and belief, Trey Smith also did it to set-up his prosecution.

608. The record facts prove that McGrath, Brown, O'Malley and Ogden played key interdependent roles in the initiation and continued conspiratorial prosecution of McDonough.

XXIII. *Trey Smith Gave McGrath Immunity To Deny Any Guilt, Not Give Truthful Information Against the Dem C/O and To Falsely Incriminate McDonough.*

609. Immediately after Trey Smith threatened to "fuck" McDonough on January 27, 2010, he telephoned McGrath's attorney and offered his client immunity for "anything of value."

610. Several months later, McGrath entered a cooperation agreement that required he give complete, truthful information, but he denied any guilt or knowledge about the AB forgery contrary to the irrefutable voter testimony and AB documents that proved his guilt and made false accusations against McDonough that supported Trey Smith's silly prosecution theory.

611. Notably, contemporaneous billing record entries show that Trey Smith spoke briefly with McGrath's attorney by telephone on four occasions from January 27, 2010 to February 5, 2009 and then on March 2, 2010, prepared a cooperation agreement. Trey Smith's pertinent billing record entries are incorporated herein by reference.

612. Soon after McDonough obtained Trey Smith's initial time records, Trey Smith obtained a court order sealing those public records so McDonough could not again obtain them.

613. Upon information and belief, Trey Smith's time record entries show that from the date of his appointment on September 28, 2009 until the date he threatened McDonough on January 27, 2010, he spent little or no time investigating any Dem C/O known to be a suspect.

614. However, those records show that within an hour of threatening to prosecute McDonough he blindly offered McGrath immunity from prosecution.

615. Upon information and belief, before January 27, 2010, Trey Smith conspired with McGrath and others to fabricate McGrath's false incrimination of McDonough as a basis for his scapegoat prosecution.

616. On March 12, 2010, McGrath executed a written cooperation agreement and was questioned by Trey Smith and Ogden about the AB forgery. The Cooperation Agreement is incorporated herein by reference.

617. McGrath executed a written deposition on March 22, 2010, after reviewing and/or revising it with counsel and/or Trey Smith. His deposition is incorporated herein by reference.

618. Upon information and belief, Trey Smith and Ogden permitted McGrath, McInerney and others to review and revise their depositions after meeting with law enforcement, contrary to established law enforcement best practices and NYSP policy, rules or regulations.

619. Essentially, in his sworn statement, McGrath falsely incriminated McDonough and lied about everything, especially what occurred in McDonough's office on Sept. 14, 2009.

620. Specifically, therein McGrath alleged:

(a) He saw McDonough write false Excuses on two (2) AAB of the many he filed; and,

(b) On September 14, 2009, he heard McDonough and Brown talk about "*... the need to have names [for an AB Agent] listed on each of the [AAB] ... [he] took [] to mean that the "Released To " names were blank on the [AAB] they were speaking about, ... JWelch come up as a name that could be entered .... [He] remember[ed Brown] ... calling [Jim] from his cellphone ... [but did] not recall [Brown] mentioning the number of [AAB] ... [He] knew from the conversation ... there were roughly 35 [AAB] they were talking about .... [He] knew it would be difficult to track people down with the [AB] .... [He] wasn't sure who had the [AAB] at that point.... [He] told them both to make sure that they didn't mess with the voters from District 1. [He] specifically mentioned JWelch and told them both that his excuse was that he was a diabetic. [He] knew his [AAB] was in the pile because [he] had seen it Saturday when [he] met with Dan Brown and Aldrich at Corliss Park. [He] had also seen [ ] McDonough fill-in the blank excuses on the [AAB] of Dickinson and Taylor back in August.*"

621. McGrath also alleged that McDonough "kicked" him and Brown out of his office after mentioning AB Agent names apparently because he did not want them to be involved or witnesses to his false "finishing" of AAB.

622. McGrath did not mention that O'Malley was in the room at any time.

623. The accusations McGrath made against McDonough were directly contradicted and proven false by the voter affidavits and AB documents as well as the later trial testimony of Brown and J Welch.

624. Trey Smith and Ogden also knew that McGrath's denial of guilt was proven false by the voter affidavits and AB documents already obtained, as follows:

(a) *Dickinson AB Documents. McGrath* claimed: The voter entered Mason as AB Agent, McDonough entered a false Excuse and he signed voter's name with permission. *Dickinson* stated: He signed a voter registration card (or document) for McGrath; he did not give anyone any information on the AAB; and he did not receive an AB, sign an AB envelope or vote.

(b) *Taylor AB Documents. McGrath* claimed: The voter wrote Mason as AB Agent; he told McDonough the correct voter Excuse; and, he signed her name on AB envelope and voted her AB with her permission. *Taylor* stated: She signed a voter registration card; she never got an AB or gave anyone permission to vote it; and the Excuse on her AAB was incorrect.

(c) *John Gilbert AB Documents. McGrath* claimed: Gilbert had his wife sign his AAB; he wrote voter's AB Agent on his AAB; he does not recall who wrote the Excuse on his AAB; and, he signed the voter's AB envelope and voted his AB with permission. *Gilbert* stated: He could not read/write too well; he was not registered to vote; he never saw or signed an AAB; McGrath had him sign something; he did not believe it is his signature on AB envelope, but was not

certain; and, he never saw or voted an AB or just signed an AB envelope.

(d) *Stephan Carpenter AB Documents. McGrath* claimed: he signed and completed the voter's AAB with information from the voter; the voter signed his AB envelope and he voted the AB with permission and "licked the envelope and mailed it to the BOE as [he] did with all the ballots"; and, he knew the voter. *Carpenter* stated: McGrath asked to vote for him and he signed a voter registration form; he signed an AAB, but did not complete it, his name was spelled wrong and his address was wrong on both forms; he did not recall voting an AB or seeing AB envelope, but the signature looks like his; he did not recall checking boxes on a paper ballot; and he had no objection if his AB was voted for McGrath because he also knew his brother the State judge.

(e) *Marc Welch AB Documents. McGrath* claimed: he knew the voter and did not fill-out his AAB but introduced him to Brown and Aldrich and they completed the AAB with him; the voter signed his AB envelope and he voted the AB with the voter because the voter had trouble writing; and, he licked the AB envelope and sent to BOE for the voter. *Welch* stated: McGrath and [Mason] had him sign an AAB; he did not sign an AB; and he voted in person instead.

625. Trey Smith and Ogden knew that the evidence already obtained was sufficient to convict McGrath and proved that his purported cooperation was false in its entirety.

626. Upon information and belief, McGrath was given immunity solely to protect himself from

prosecution, keep him from incriminating the other Dem C/O and initiate the scapegoat prosecution of McDonough because he had no other reason to lie once immunized.

627. By November 2009, all the guilty Dem C/O had been silenced and prevented from being called as witnesses by being named targets, given no incentive to come forward or tell the truth and told not to be concerned because it would all be over soon.

628. Nonetheless, substantial irrefutable evidence was overwhelmingly sufficient to convict McGrath and, therefore, his prosecution was unavoidable without a scapegoat.

629. McGrath, Trey Smith and Ogden knew that the testimony and AB documents of voters, especially Welch and Taylor, would prove his guilt and the falsity of his cooperation.

630. They also knew, however, that if McGrath told the truth it would have led to the conviction of McInerney and everyone involved in the crimes.

631. At the same time, he could not truthfully incriminate McDonough for the crimes that he and his cohorts committed.

632. Thus, the only way Trey Smith could avoid convicting McGrath and other Dem C/O was to give him immunity to falsely accuse McDonough of forging AAB of those voters.

633. Consequently, the conspiracy required that McGrath be given immunity with impunity because the overwhelming and irrefutable evidence of his guilt, including the inevitable finding of his DNA on AB envelopes that he forged and licked close, would

also prove that he breached his cooperation agreement by not giving complete or truthful information.

634. The fact that McGrath falsely denied his own guilt to Trey Smith and Ogden and they accepted it as truthful when known to be false, alone proves the conspiracy alleged.

635. The fact that McGrath gave a false sworn statement about what happened in McDonough's office on September 14, 2009 to falsely incriminate him for Brown's crimes while at the same time failed to mention that O'Malley was present and sitting across the desk from Brown as he wrote Excuses on several AAB that Brown gave him, also proves it.

636. The conspiracy and set-up is also clear from the fact that Brown and O'Malley later gave fabricated testimony consistent with McGrath's false accusation and that could not have happened unless they all acted in conspiracy because they all knew that their testimony, although as consistent as possible, was fatally contradictory and false.

637. In addition, McGrath's failure to admit that he, McInerney, Brown or any of the other Dem C/O acted in conspiracy to commit the AB forgery (especially with respect to the AAB of Welch, Taylor and Dickenson that the record facts were completed in the handwriting of Brown or Dan Brown) even after given immunity and Smith's failure to prosecute him even though his purported cooperation and testimony was proven false by the voters and forged AB documents, also evidences the conspiracy to scapegoat prosecute McDonough at its inception.

638. According to Trey Smith, he blindly offered McGrath immunity for "anything of interest" only because by November 2009 his investigation was stalled, "many questions were unanswered" and he and Ogden thought McDonough knew more about McInerney.

639. Trey Smith further claims that on or about January 27, 2010 to March 12, 2010, McGrath unexpectedly dropped a bombshell of incrimination against McDonough.

640. However, the record facts and common sense belie Trey Smith's absurd claims.

641. No reasonable investigator or prosecutor investigating the matter would have blindly given McGrath immunity without knowing that he was going to give information worthy of such consideration especially because his conviction was a fait accompli.

642. The case was about "massive" voter fraud and, more importantly, the forgery of AB votes and signatures, and the evidence proved that McGrath committed those serious crimes in conspiracy with Brown, McInerney and others.

643. Nonetheless, instead of offering McGrath a plea deal only if he provided truthful information against Brown, McInerney and his other cohorts that was consistent with the evidence or returning to DeFiglio or any other cooperative witnesses for more information, he gave immunity to McGrath allegedly without knowing the nature of the cooperation first and then accepted his patently false statement and unexpected incrimination of McDonough to

commence prosecution against a clerk for allegedly entering data on AAB.

644. According to Trey Smith, it just happened that McDonough was the same cooperative witness who, although he was not accused, suspected or implicated in any crimes, he threatened to "fuck" unless he confessed to the AB forgery that McInerney and others committed to get him to incriminate McInerney even though he already told McInerney he would not be prosecuted, only moments before offered McGrath immunity "for anything of interest."

645. Furthermore, McGrath's patently false accusations just happened to soundly support the preposterous prosecution theory that Trey Smith allegedly adopted after that because before then there was no probable cause to suspect McDonough committed any crime when, in fact, he had questioned witnesses about and sought their incrimination of him before McGrath gave his patently false information and incriminated him.

646. Then, despite the fact that McGrath's purported cooperation was patently incredible and proven false by substantial evidence, Trey Smith relied on it to initiate the prosecution based on his false accusations and the nonsensical prosecution theory, as stated.

647. Also, the record facts asserted prove that McDonough was tapped for scapegoat prosecution long before Trey Smith threatened him and gave McGrath immunity.

648. Upon information and belief, Brown, O'Malley and other Dem C/O conspired and agreed prior to January 27, 2010 to then give whatever false

testimony was "needed" to corroborate McGrath's false testimony in the initiation and continuation of the prosecution.

649. Later, Trey Smith and Ogden absurdly defended McGrath's false testimony and failed to rescind his immunity even after his denial of guilt, failure to provide any information against the guilty Dem C/O and his patently incredible accusations against McDonough in breach of his cooperation agreement were proven false by substantial irrefutable evidence.

650. Trey Smith then conspiratorially prosecuted McDonough for non-criminal acts he did not commit (alleged entry of false information on authenticated AAB) instead of McInerney, McGrath and other Dem C/O for the serious crimes the evidence proved they did commit.

XXIV. Other Salient Evidence of Conspiracy to Scapegoat Prosecute McDonough.

A. *McNally Advised Martiniano to Not Disclose Facts Directly that Directly Incriminated Brown and McInerney because "It Will Be Over Soon."*

651. Upon information and belief, on/about September-December 2010, at LoPorto's Restaurant, Martiniano told McNally that he knew Trey Smith and NYSP talked to witnesses but they never contacted him and he had personal knowledge of facts relevant to the AB forgery.

652. Upon information and belief, at that time, Martiniano specifically asked McNally whether he should contact Trey Smith or the NYSP about the matter.

653. In fact, Trey Smith, Ogden and NYSP knew Martiniano and Renna were implicated in the AB forgery or material witnesses but they were never questioned.

654. Upon information and belief, in response, McNally told Martiniano that he should not contact anyone or worry because "*it was all going to go away soon anyway.*"

655. Martiniano relied upon McNally's advice because he was the county prosecutor.

656. Upon information and belief, McNally gave that advice without having any discussion with Martiniano about the facts of which he had knowledge.

657. In fact, as stated, McInerney and Brown admitted to Martiniano on September 12, 2009 that they were going to use AAB they had voters sign to forge AB.

658. Therefore, the advice McNally gave Martiniano effectively resulted in the further suppression of direct evidence of the guilt of McInerney and Brown as well as the innocence of McDonough that should have been obtained by Trey Smith and Ogden before his indictment.

659. Obviously, McInerney and Brown knew what they had told Martiniano.

660. Consequently, the personal relationships among McNally, McInerney, Trey Smith and other Dem C/O who committed the AB forgery is compelling circumstantial evidence of their conspiracy to scapegoat prosecute McDonough as alleged.

B. *McNally Made Extrajudicial Statements Likely to Prejudice McDonough.*

661. On September 29, 2011, during a WNYT newscast, McNally said McDonough's defense were *"ridiculous conspiracy theories"* and admitted he talked with him and McInerney about the case for the obvious implication that he was guilty.

662. Later, on or about October 19, 2011, during a Talk 1300 radio show interview, McNally said *"it would take an eternity"* to understand the logic of McDonough's motion to dismiss the indictment and disqualify *Trey Smith* based on his illegal appointment despite the fact it was based on well-settled law and a few indisputable record facts of which he was aware.

663. Upon information and belief, there could be no plausible reason for McNally's public comments after disqualification himself other than to further the scapegoat prosecution.

664. Later, McNally opposed McDonough's request that the county commence civil action to have Trey Smith's appointment nullified and opposed his motion for disqualification and dismissal knowing that he did not file a proper motion and therefore it was unlawful.

C. *Trey Smith Failed to Obtain McInemey's Cell Records.*

665. Trey Smith subpoenaed and reviewed the mobile phone records of McDonough, LoPorto, Brown, Welch and others but claimed that he and the NYSP were unable to obtain those of McInerney despite repeated efforts.

666. McNally refused a state freedom of information law request to provide the records of his public mobile phone, even redacted to protect law enforcement or personal privacy.

D. *No Law Enforcement Forensic Expert Witness Utilized During Investigation.*

667. Despite the fact that Trey Smith was conducting an investigation of AB forgery he did not obtain the services of one of the many qualified law enforcement Forensic Document Examiners (FDE) or handwriting experts that were available to analyze the questioned AB documents without cost during his investigation and prior to any Grand Jury presentation.

668. Upon information and belief, Trey Smith purposely did not request and obtain the services, of any such law enforcement FDE or handwriting expert because a proper examination of the forged and falsified AB documents would have required that handwriting exemplars first be obtained from any suspect and specifically, McGrath, McInerney, Brown, Dan Brown, Renna and other Dem C/O who were suspects, but not McDonough.

669. Upon information and belief, Trey Smith purposely did not request and obtain the services of any such law enforcement FDE or handwriting expert because he did not want proper and objective handwriting and forensic analysis or findings concerning the AB documents.

670. Upon information and belief, Trey Smith purposely did not request and obtain the services of any such law enforcement FDE or handwriting

expert because of the conspiracy to scapegoat prosecute McDonough and its objectives.

E. *No Handwriting Exemplars of Dem C/O Obtained During Investigation.*

671. In fact, Trey Smith purposely did not request and obtain handwriting exemplars of McGrath, McInemey, Brown, Dan Brown, Renna or any other Dem C/O for the purpose of having a proper forensic or handwriting analysis done concerning the questioned AB documents during his investigation, and specifically, before he began to present a case to the Grand Jury.

672. In fact, Trey Smith purposely did not request and obtain handwriting exemplars of McDonough for the purpose of having a proper forensic or handwriting analysis done concerning the questioned AB documents during his investigation, and specifically, before he began to present a case to the Grand Jury for writing false AB Agent names and Excuses on all of the AAB that the Dem C/O had or ostensibly had voters sign.

673. Upon information and belief, Trey Smith purposely did not request and obtain handwriting exemplars from McGrath, McInerney, Brown, Dan Brown, Renna, the other Dem C/O who were suspects or McDonough before he began to present a case to the Grand Jury because he did not want proper and objective handwriting and forensic analysis or findings concerning the AB documents before he presented a case to the Grand Jury to initiate the prosecution of him because of the conspiracy to scapegoat prosecute him.

F. *Effort to Coerce McDonough to Plead Guilty. McDonough Tells Trey Smith He Will Expose Scapegoat Conspiracy.*

674. On or about January 2010 and thereafter up to and including January 28, 2011, Trey Smith sought to coerce McDonough into pleading guilty to avoid indictment.

675. The effective suppression of the truthful testimony of O'Malley, Martiniano, McInerney, Renna, Galuski, Campana and others that would have exculpated McDonough and the false testimony of McGrath and Brown would never have been undone if McDonough had plead guilty in the face of a grossly over-charged indictment.

676. Also, Renna would never have come forward, all the Dem C/O would have asserted their 5th Amendment right to remain silent to keep from testifying and Trey Smith would have simply discredited and marginalized Martiniano if he later came forward.

677. However, because he was innocent, the conspiracy did not end in McDonough's plea because he refused to succumb to coercion even after Trey Smith targeted him for prosecution as the mastermind of the AB forgery and leaked that his indictment was imminent.

678. Furthermore, even after McGrath in March 2010 made his false accusations against McDonough as stated, there was no reasonable cause to believe McDonough forged any AB or committed any crime concerning AAB.

679. Also, there could be no credible evidence against McDonough because he committed no crime

and was not involved in the AB forgery of the Dem C/O.

680. On the other hand, by November 2009, there was substantial evidence to prove that all the AB released on AAB the Dem C/O filed on September 12, 2009 and September 14, 2009 were forged by McInerney, McGrath, Brown, Renna and others in conspiracy.

681. In fact, McGrath, McInerney, Brown and Renna falsely voted all the forged AB and sealed the AB envelopes in which they were filed.

682. Also, Trey Smith took no further substantive action in the investigation of the AB forgery after McGrath falsely incriminated McDonough in March 2010.

683. At all times on or about July 2010 and thereafter, McDonough informed Trey Smith through counsel that he would provide truthful testimony if called upon to testify but if prosecuted would seek vindication by dismissal or trial verdict,

684. More specifically, after Trey Smith disclosed copies of all witness statements obtained through the private and criminal investigations and related records, on or about July 2010 and all times thereafter, McDonough informed Trey Smith that it was obvious from all the evidence that the AB forgery was committed by those Dem C/O he sought not to prosecute; i.e. McGrath, Brown, McInerney, DeFiglio, Renna and others.

685. In fact, at all times thereafter, defense counsel repeatedly told Trey Smith that if McDonough was wrongfully prosecuted he would take all proper

actions to expose the scapegoat conspiracy in defense of any such unlawful and reprehensible action.

G. McDonough's DNA Allegedly Found on Three (3) AB Forged by McInerney and Renna That Supports Prosecution Theory Is Further Evidence of Conspiracy.

686. Upon information and belief, because of the alleged conspiracy, Trey Smith knew from McInerney, Brown and McGrath, indirectly through his counsel and/or McNally, that: (a) DNA of Renna likely would be found on several AB envelopes he forged; (b) DNA of McGrath likely would be found on several AB envelopes; (c) the DNA of McInerney likely would not be found on any AB envelopes because he used gloves and water to seal AB envelopes when he forged them; and the DNA of Brown would likely not be found on any AB envelope because he did not seal them.

687. Upon information and belief, Trey Smith knew the DNA of McInerney, Brown or Dan Brown would not be found on any AB envelopes because he told them they would not be prosecuted before DNA testing was sought (although McInerney forged all or most of them).

688. Upon information and belief, Trey Smith must have known that McGrath's DNA would be found on the AB he forged.

689. Also, Trey Smith never questioned Renna or named him as a suspect so no AB envelope was tested for his DNA at that time.

690. On or about July 2011, Trey Smith obtained a court order compelling McDonough, LoPorto, McInerney and/or other to submit to DNA testing.

691. On various dates thereafter, Trey Smith had numerous AB envelopes tested for DNA even though the focus of his investigation was never centered on AB forgery.

692. Upon Trey Smith's direction, the NYSP tested numerous AB envelopes for DNA.

693. Thereafter, the NYSP crime lab allegedly found McDonough's DNA on the sealed portion of three (3) forged AB envelopes (voters Testa, Robertson and Suozzo).

694. Interestingly, McDonough's DNA was allegedly found: (a) only after the NYSP crime lab used extraction methods Trey Smith proposed after multiple attempts following established protocols resulted in negative findings and Trey Smith monitored its utilization; (b) only on three AB envelopes; and, (c) only on the AB envelope of voters who were not among the public housing residents known to have been asked to sign AAB by McGrath, McInerney, DeFiglio, Brown, Dan Brown, LoPorto, Galuski, Aldrich or any other Dem C/O on or before September 12, 2009.

695. Also, McInerney forged voter Suozzo's AB but he did not mention McInerney in his deposition, and, Renna forged the Testa and Robinson AB but had no contact with them and was never questioned or identified as a suspect by Trey Smith, even after he tampered with DeFiglio for McInerney and Brown in 2010 to keep him quiet.

696. Therefore, it just so happened that McDonough's DNA was extracted from AB envelopes of voters that, as long as McInerney and Renna did not testify, would appear had no contact with any

Dem C/O for the false implication that they must have been forged "behind the counter" by McDonough which just happened to support the prosecution theory.

697. The DNA was found using Trey Smith's new technique in his and Ogden's presence, after none was extracted from many other envelopes.

698. However, McDonough determined and disclosed to the supervisory NYSP after his indictment that: (a) the AAB for voters Testa and Robertson appeared to be completed entirely in the uniquely identifiable handwriting of Renna (for which he was later prosecuted only because of the action of McDonough and supervisory NYSP), and, (b) the 2008 and 2007 AAB for voter Suozzo appeared to be completed in the uniquely handwriting of McInerney.

699. McDonough recalled seeing Renna only once in that election period and assisting him in filing two (2) AAB for the 2009 WFP primary while working openly at the office counter with other BOE employees nearby.

700. McDonough recalls that in assisting Renna he inserted those AB into envelopes.

701. However, McDonough had no contact with Suozzo or his AB envelope, did not falsely vote any AB or forge any AB envelope and was not indicted for doing so.

702. Thus, the finding of his DNA on those envelopes is innocuous or questionable.

703. Ogden collected McDonough's DNA and, upon information and belief, attended the NYSP crime lab

when Trey Smith went there to monitor its testing of those AB envelopes.

704. McInerney admitted at trial that Renna was like a father figure and his mentor.

705. McDonough was not involved in the forgery of any AB envelope, he did not lick or seal any of those AB envelopes and no saliva was present or tested on any AB envelope.

706. Therefore, if McDonough's DNA was truly present on any of those AB envelopes it is only because of incidental handling, the environment or some contamination.

707. The only significance of the alleged finding of McDonough's DNA on those AAB concerns the fabricated false trial testimony of McInerney and Renna, as discussed below.

H. *Trey Smith Begins Grand Jury Action Against McDonough When No Credible Testimony for Indictment.*

708. On or about September 2010, Trey Smith commenced a Grand Jury proceeding against McDonough and LoPorto.

709. At the same time, Trey Smith served subpoenas with McDonough as a defendant and leaked to the media that he was the primary target whose indictment was imminent.

710. In support of a DNA application, Trey Smith submitted the affidavit of Ogden in which he alleged the AB forgery was committed in conspiracy by McGrath, Brown, McInerney and others, including McDonough.

711. However, Trey Smith did not present a conspiracy charge before the Grand Jury, never charged any Dem C/O of committing the AB in conspiracy and never intended to indict or prosecute McGrath, Brown, McInerney and other Dem C/O who committed the AB forgery.

712. Trey Smith had no handwriting or forensic evidence against any person.

713. More importantly, Trey Smith had no credible evidence whatsoever to even establish reasonable cause to believe that McDonough committed AB forgery or any crime.

714. Trey Smith had only the fabricated false accusations of McGrath about two (2) AAB and a purported conversation between he and Brown about AB Agent names, as stated, and the essentially meaningless purported finding of McDonough's DNA on three (3) AB envelopes.

715. Therefore, it would have been plain to any reasonable investigator or prosecutor that there was no reasonable cause to suspect McDonough committed AB forgery or any crime.

716. Nonetheless, on or about September 2010 to January 2011, Trey Smith sought to coerce McDonough into pleading guilty through routine leaking of information, abuse of process and other scare tactics while he presented evidence before a Grand Jury.

717. Again, however, McDonough stood on his innocence and refused to bow.

I. *McDonough's Notice of Intent to Testify and Request for Witness Testimony.*

718. In September 2010, McDonough gave Trey Smith notice of his intent to testify in Grand Jury and request that Bugbee, O'Malley and others be called as witnesses on his behalf.

719. That fact was reported in the local newspapers and, upon information and belief, was known by McInerney, McNally, the Democratic Chairman and others.

J. Trey Smith, McNally, McInerney and Chair Wade Acted in Concert to Keep McDonough and Bugbee from Testifying in Grand Jury.

720. Upon information and belief, Trey Smith knew that the fabricated false testimony of McGrath was insufficient to obtain such an indictment, especially if challenged.

721. Upon information and belief, Trey Smith knew that the false testimony of Brown, Ogden and O'Malley had to be fabricated to be as plausibly consistent as possible with McGrath's fabricated false testimony, especially regarding the events of September 14, 2009 in McDonough's office if he testified as noticed.

722. Upon information and belief, Trey Smith also knew that McDonough would incriminate McGrath, Brown and McInerney in AB forgery and perjury if he testified.

723. Upon information and belief, Trey Smith also intended to obtain a grossly overcharged indictment to coerce a guilty plea or obtain a wrongful conviction at trial.

724. Therefore, after McDonough gave notice of his intent to testify, upon information and belief

McInerney, McNally, Chair Wade and Trey Smith took action to prevent McDonough from testifying and avoiding a grossly over-charged indictment.

725. Upon information and belief, Trey Smith, McInerney and McNally knew that action was critical to the scapegoat prosecution because there can be no other plausible reason for McNally to once again involve himself in the matter from which he disqualified himself purportedly because of his political relation with McInerney by giving legal advice to the primary target of a Grand Jury case, especially when all other pertinent facts are considered.

726. Initially, Chair Wade told McDonough that he recommended against him testifying before the Grand Jury.

727. Soon thereafter, McNally called McDonough, without the knowledge or consent of his attorney, to give him the names of attorneys to retain in substitution of record counsel.

728. McInerney acted as McNally's messenger in giving those names to McDonough.

729. On December 6, 2010, McNally left McDonough a voice message to call him.

730. On December 7, 2010, BOE employee Mary Sweeney told McDonough that McInerney gave her the names of two attorneys McNally said he should contact because they would *"do a good job at a lesser fee"* than his attorney.

731. On December 8, 2010, McNally answered McDonough's return call and asked if he had *"gotten the message from our friend"*, but when asked his

advice about testifying before the Grand Jury, said *"I can't answer that question, I got to go"* and ended the conversation.

732. Shortly after that call, Chair Wade called and told McDonough that one of the two named attorney's owed him a favor and he would make a call for him.

733. When called, that attorney told McDonough that he likely would not have him testify before the Grand Jury and could probably resolve the case without too much expense.

734. Then, before the date McDonough would be permitted to testify, O'Malley and other BOE employees told McDonough that Trey Smith had treated them in an aggressive and rude manner ("almost as if they were criminals").

735. Upon information and belief, Trey Smith's actions were further tactics to scare, intimidate and prevent McDonough from testifying in conjunction with his personal derogatory remarks and the threat of prosecution he made to McDonough at the NYSP station.

736. Trey Smith also ensured that Bugbee did not testify before the Grand Jury about AB protocol and procedures or the 2007 and 2008 AAB that he believed were forged by McInerney but ignored by Trey Smith by advising him that if he testified he might incriminate himself in elections crimes and be prosecuted so he would be required to waive immunity and it was in his interests to retain an attorney.

737. Upon information and belief, Trey Smith's actions were also purposeful tactics to intimidate,

scare and prevent Bugbee from testifying about facts that would tend to exonerate McDonough and incriminate McInerney in the AB forgery.

738. All of those actions and orchestrations instilled in McDonough more concern and distrust of Trey Smith and caused him not to testify before the Grand Jury contrary to the strong advice and recommendation of his attorney.

739. McDonough believed that Trey Smith was intent on fabricating false testimony to wrongfully prosecute him instead of the Dem C/O guilty of the AB forgery and he did not trust him to properly and fairly present the matter before the Grand Jury.

XXV. Conspiratorial Fabrication of False Testimony to Initiate Prosecution.

740. When the orchestrations to coerce McDonough into pleading guilty did not work Trey Smith then had to fabricate the false testimony of Ogden and O'Malley to be as consistent as possible with McGrath's false testimony, especially if he did testify.

741. In fact, the record facts show that McGrath and O'Malley all played vital interconnected roles in the conspiratorial fabrication of false testimony to initiate the scapegoat prosecution of McDonough because if any one of them told the truth, especially about what happened in his office on September 14, 2009, he could not have been prosecuted.

742. The record facts prove that Ogden also played a key role in the initiation of the prosecution through patently false and improper purported expert law enforcement testimony.

743. The record facts also prove, however, that the conspiratorially fabrication of the false testimony of those key conspirators evolved to the absurd through the process, especially when the trial testimony of McInerney and Renna was forced though the actions of McDonough, Sr. Inv. O'Brien and the FBI in exposing the conspiracy, as discussed.

A. *Trey Smith and Ogden Emails Show Lack of Evidence and Conspiracy in Prelude to Ogden's Fabricated False Grand Jury Testimony to Initiate Prosecution.*

744. In any event, as said, when Trey Smith began presenting a case before the Grand Jury to indict McDonough the purported evidence against him was essentially non-existent.

745. Trey Smith and Ogden essentially admitted that fact in emails related to DNA.

746. In an email dated September 27, 2010, Trey Smith stated: "Now I'm thinking maybe I start off with an indictment of both LoPorto and McDonough instead of just Loporto ... I don't think any statements from McDonough to third parties (NYSP) explicitly incriminate LoPorto and none from LoPorto (to Couch) explicitly incriminate McDonough .... "

747. In reply, by email dated September 29, 2010, Ogden stated: "I agree with indicting both of them. At the very least that McDonough is guilty of official misconduct. " A copy of those emails is attached as Exhibit "E" and incorporated herein by reference.

B. *McGrath's Conspiratorially Fabricated False Testimony to Initiate Prosecution.*

748. Upon information and belief, on or about December 8, 2010, McGrath testified before the Grand Jury in accordance with his prior statement.

749. In substance, McGrath testified that he witnessed McDonough write false Excuses on the Dickenson and/or Taylor AAB and on another date overheard McDonough talking with Brown about names he intended to write as AB Agents on about thirty-five (35) AAB that the Dem C/O had voters sign on and/or before September 12, 2009.

750. Again, McGrath testified that McDonough "kicked" him and Brown out *of* his office after mentioning AB Agent names to be entered on AAB apparently because he did not want them to be involved or witnesses to his false "finishing" *of* AAB.

751. Again, however, McGrath did not mention that O'Malley was in the room when he and Brown were there.

752. Upon information and belief, McGrath also denied having committed the AB forgery or criminal acts in conspiracy with Brown, Dan Brown, McInerney and other Dem C/O.

753. Upon information and belief, at that time, McGrath intentionally did not testify truthfully about material facts known to him concerning the AB forgery that would have incriminated Brown, McInerney and others in the AB forgery, incriminated Brown in perjury, exonerated McDonough from any indictment or prosecution in the matter and exposed the conspiratorial scapegoat prosecution.

754. Specifically, McGrath did not admit that he committed the AB forgery in conspiracy with Brown, McInerney, Dan Brown, DeFiglio, Renna and others.

755. Upon information and belief, McGrath's testimony was false in all material respects and fabricated in conspiracy with Trey Smith and/or others to initiate the scapegoat prosecution *of* McDonough and obtain the objectives *of* their extrajudicial conspiracy, as alleged.

756. McGrath's fabricated false testimony incriminated McDonough in alleged acts which he did not do, but for which he was indicted as a direct result thereof.

757. More significantly, McGrath's false testimony set the foundation for the false testimony *of* Ogden, Brown and O'Malley as discussed below.

C. *Ogden's Conspiratorially Fabricated False Testimony to Initiate Prosecution*

758. Upon information and belief, on or about January 13, 2011 and January 24, 2011, Ogden testified before the Grand Jury, in substance, that he reviewed the handwriting on the Dickenson and/or Taylor AAB and all the other allegedly falsified or forged AAB filed in the subject WFP (about 40) and in his experience as a NYSP investigator it was his opinion that the AB Agent and Excuses on all those AAB were written in the same handwriting and appeared to reflect a distinct pattern that showed they were all falsified by the same person.

759. Upon information and belief, at the same time, Ogden failed to testify about relevant evidence obtained during the investigation that would have exonerated McDonough and proved that the subject

AB forgery was committed by known Dem C/O, including McGrath.

760. Upon information and belief, Ogden intentionally did not testify truthfully about material facts known to him concerning the AB forgery that would have exonerated McDonough from any indictment or prosecution with respect to the matter.

761. Upon information and belief, Ogden's testimony was false in all material respects and fabricated in conspiracy with Trey Smith and/or others to initiate the scapegoat prosecution of McDonough and obtain the objectives of then extrajudicial conspiracy, as alleged.

762. In fact, the Excuses and AB Agents on all those AAB do not appear to the naked eye and observer to have been written in the same handwriting by the same person and the record facts prove that they were not.

763. No reasonable investigator could have offered such patently improper and false testimony or purported expert investigator opinion testimony.

764. Ogden's fabricated false testimony incriminated McDonough in alleged acts which he did not do but for which he was indicted as a direct result thereof.

765. More significantly, Ogden's false testimony provided the sole basis for the indictment of McDonough for most the counts of the indictment filed against him.

766. Ogden's testimony was the basis for McDonough's indictment on all charges except the ten (10) AAB that related to the false testimony of

McGrath and O'Malley and the three (3) AB envelopes that related to the purported DNA evidence, as described.

767. Upon information and belief, the AB Agents and Excuses on all the relevant AAB were not written in the same handwriting, as Ogden testified.

768. Ogden later admitted at trial that his purported law enforcement expert testimony before the Grand Jury was not correct and a mistake.

E. *O'Malley's Conspiratorially Fabricated False Testimony to Initiate Prosecution*

769. On or about December 9, 2009, O'Malley appeared before the Grand Jury in response to subpoena openly served upon him at the BOE.

770. At that time, Trey Smith elicited O'Malley's truthful testimony that he wrote Excuses on several of the AAB upon which he wrote Excuses in McDonough's office on September 14, 2009, which he was shown.

771. At that time, Trey Smith did not show O'Malley all eight AAB on which he wrote the Excuses that Brown gave him while in McDonough's office on September 14, 2009.

772. O'Malley testified vaguely that the person who gave him those Excuses was *"probably the candidate"* who got that information from *"probably an operative."*

773. In truth, as stated, O'Malley got all those Excuses he wrote on the AAB from Brown (the candidate) after Brown made a telephone call to McInerney (the operative) and told O'Malley that he

had the Excuses the voters gave so it could be entered on the AAB, as stated.

774. Upon information and belief, O'Malley's initial testimony was orchestrated by Trey Smith as a ruse to hide from McDonough the fact O'Malley would return to the Grand Jury and falsely accuse him of making him write false Excuses on AAB in his office.

775. The fabrication of O'Malley's false testimony by Trey Smith is further evidenced by certain relevant memoranda and emails between Trey Smith, Ogden and O'Malley's attorney. Relevant memoranda/email are attached as *Exhibit "F"* and incorporated herein by reference.

776. Those memoranda and emails show, in substance, that before and/or after O'Malley first testified before the Grand Jury, Trey Smith purportedly analyzed the AAB and determined that his handwriting appeared on many AAB and, therefore, he could be prosecuted as a "kingpin" of the AB forgery.

777. Then, on or about December 13, 2010 at 2:45 a.m., Trey Smith directed Ogden to contact O'Malley and warn him that he should get an attorney because there were perjury problems with his Grand Jury testimony.

778. Upon information and belief, Ogden did so that same day.

779. Thereafter, on December 14, 2010, Trey Smith contacted the BOE and informed its employees under subpoena that the Grand Jury scheduled for the next morning was cancelled.

780. That same day, Trey Smith called McDonough's counsel to specifically confirm that the Grand Jury scheduled for the next morning had been cancelled.

781. Then, on December 15, 2010 at 4:10 a.m., Trey Smith sent O'Malley's attorney an e-mail threatening to prosecute him for AB forgery and warning that it made no sense for him to protect his boss, who was likely going to be publicly disgraced and imprisoned.

782. Later that morning, O'Malley took a personal day off and re-appeared before the Grand Jury without informing anyone in the BOE about it.

783. That day, O'Malley returned to the Grand Jury and testified, in substance, that on September 14, 2009, his boss McDonough called him into his office and told him to make-up Excuses and write them on those eight (8) AAB, so he did.

784. At trial, however, O'Malley admitted that Trey Smith called him at his home the night before he returned to the Grand Jury, although he had never done so before.

785. O'Malley testified, however, that he could not recall anything he and Trey Smith discussed; he could not recount one word of anything discussed.

786. Upon information and belief, O'Malley's testimony was false in all material respects and fabricated in conspiracy with Trey Smith and/or others to initiate the scapegoat prosecution of McDonough and obtain the objectives of their extrajudicial conspiracy, as alleged.

787. Upon information and belief, O'Malley's surreptitious return to the Grand Jury was orchestrated by Trey Smith to avoid exposing O'Malley's false testimony and the conspiracy to McDonough. Several relevant contemporaneous e-mails between Trey Smith and McDonough's defense attorney concerning the matter are incorporated herein by reference.

788. Upon information and belief, O'Malley's truthful testimony would have incriminated Brown and McInerney in the AB forgery, incriminated McGrath and Brown in perjury, exonerated McDonough and exposed the conspiratorial scapegoat prosecution.

789. Upon information and belief, O'Malley intentionally did not testify truthfully.

790. Specifically, O'Malley did not admit that Brown told him the Excuses to write on those AAB in McDonough's office in the presence of McGrath and that he did not commit any crime while assisting Brown nor, to his knowledge, did McDonough.

791. Upon information and belief, at that time, O'Malley intentionally did not testify truthfully about the delivery of the AB released on the AAB filed on September 14, 2009 to McInerney that also would have incriminated Brown and McInerney in the AB forgery, incriminated Brown and McGrath in perjury, exonerated McDonough from any indictment or prosecution with respect to the matter and exposed the conspiratorial scapegoat prosecution.

792. Upon information and belief, O'Malley's testimony was false in all material respects and fabricated in conspiracy with Trey Smith and/or

others to initiate the scapegoat prosecution of McDonough and obtain the objectives of their extrajudicial conspiracy, as alleged.

793. O'Malley's fabricated false testimony incriminated McDonough in alleged acts which he did not do, but for which he was indicted as a direct result thereof.

794. More significantly, O'Malley's false testimony was given to be consistent with the false testimony of McGrath and Ogden and the prosecution theory, as discussed.

795. Upon information and belief, the record facts show that Trey Smith knew O'Malley was in McDonough's office on September 14, 2009 because he knew O'Malley wrote Excuses on those AAB even though McGrath did not mention him and Brown did not testify.

796. Upon information and belief, O'Malley and McGrath told Trey Smith that O'Malley wrote the Excuses that Brown gave him onto those eight (8) AAB.

797. The conspiracy is also proven by the fact that O'Malley knew the truth, but played along with Trey Smith's charade of appearing as if he committed perjury in his initial Grand Jury testimony (when he had not) and that he was worried about being indicted as a kingpin in the AB forgeries (when he was not).

798. O'Malley testified at trial that he was a nervous person afraid of his own shadow, had never committed any crime before and knew the investigation centered on "his boss."

799. Therefore, if O'Malley, McGrath and Brown were not acting in conspiracy with Trey Smith none of them would have been able to lie consistently about those facts.

800. Upon information and belief, the record facts, make it obvious that O'Malley got the "word" not to talk and McGrath, Brown, Trey Smith and/or others did not want to expose him as a co-conspirator unless and until necessary.

801. Upon information and belief, therefore, McGrath did not mention O'Malley when he gave his statement in March 2010 or testified in the Grand Jury.

802. Upon information and belief, however, Trey Smith knew that he "needed" O'Malley to give false testimony before the Grand Jury to obtain an indictment after McDonough gave notice of intent to testify.

803. Upon information and belief, Trey Smith gave O'Malley immunity with impunity from the prosecution for his false testimony against McDonough just as he did McGrath.

804. Upon information and belief, McGrath and Brown knew that O'Malley could not be named as a suspect in order to prevent him giving testimony because he did nothing wrong.

805. Therefore, O'Malley would be called as a witness unless McDonough pled guilty.

806. More importantly, O'Malley, McGrath and Brown knew that if O'Malley told the truth he would exonerate McDonough and expose all of them to prosecution and civil liability.

807. Upon information and belief, O'Malley's false testimony was therefore fabricated by Trey Smith and the others to be direct proof of McDonough's guilt because that was the false inference of McGrath's false testimony (i.e. McDonough had him write false Excuses on AAB).

808. Their conspiracy is also proven by the fact that McGrath, O'Malley, Brown, McInerney and others could have told the truth about all the facts at any time, but they did not.

XXVI. Seventy-Four (74) Count Indictment.

809. On January 28, 2011, McDonough was charged by indictment with thirty-eight (38) counts of felony Forgery in the Second Degree (PL § 170.10(2) and thirty-six (36) counts of felony Criminal Possession of a Forged Instrument in the Second Degree (PL § 170.25 (Counts 52 - 87), for a total of seventy-four (74) counts.

810. Trey Smith obtained the grossly-overcharged indictment against McDonough based solely on the fabricated false testimony of McGrath, O'Malley and Ogden after having about fourteen months to follow, gather and meticulously analyze the evidence.

811. Notably, the charges concern the alleged entry of false data on signed AAB and AB, but not the false signatures or votes on those documents that those Dem C/O who were not indicted had forged and filed to illegally affect the outcome of an election.

812. On the date of indictment, McDonough made to suffer a "perp-walk" of being processed and temporarily detained at the police station until taken into custody of the NYSP, handcuffed, transported and walked before the court and media before the

court. At arraignment, Trey Smith requested the forfeiture of any passport pending disposition of the case and McDonough's liberty was restricted to travel within the United States.

XXVII. Trey Smith Notarized Alleged Forged Signatures on Two Voter Affidavits Admitted Before Grand Jury for Indictment.

813. To obtain the seventy-four count indictment, Trey Smith had to subpoena and present the testimony or CPL 190.40 affidavits of all the voters before the Grand Jury.

814. Relevant records of his investigation show that Trey Smith and the NYSP had some difficulty in locating, serving and ensuring the appearance of all those witnesses.

815. Trey Smith prepared and notarized affidavits of voters to be admitted to the Grand Jury in lieu of their testimony concerning falsification of their AAB ("Forgery Affidavit").

816. At trial, two of those voters testified that the signature on their purported Forgery Affidavit was not genuine.

817. College student Jermaine Joseph was the first prosecution witness.

818. Immediately upon being shown his purported Forgery Affidavit, he testified that the signature Trey Smith notarized above the juxtaposed name "Joseph Jermaine" was not his.

819. Mr. Joseph testified that he never saw the document before and found it humorous that his name was incorrectly juxtaposed in print several places without correction.

820. He said he never would sign such a document without correcting such an error.

821. In chambers, Trey Smith perspired so profusely that sweat literally dripped down his face as he straggled to address the issue with the Court.

822. Notably, even the trial court stated on the court record: "*... The whole trial - the first witness out of the box says there's a forged instrument that the People presented.*" The relevant portion of the court transcript is incorporated herein by reference.

823. Thus, the first witness in a case of alleged entry of false data on voter affidavits testified that the prosecutor notarized a forged signature on his purported Forgery Affidavit.

824. Later, voter Jolene Van Vranken testified similarly.

825. Mrs. Van Vranken also signed a court exhibit which clearly demonstrated that her signature did not match the one notarized by Trey Smith.

826. She also confirmed her testimony in affidavits given to private investigator and a N.Y.S. Attorney General investigator. Her Forgery Affidavit, portion of her relevant trial testimony, trial exhibit are attached as *Exhibit "G"* and incorporated herein by reference.

827. In court and chambers, Trey Smith was again speechless, but ripe with perspiration when he was confronted with the similar testimony of a second prosecution witness.

828. Trey Smith did not question those voters to establish that they were wrong in their testimony while on the stand and opposed a motion for hearing

on the issue but later contradicted their unimpeached testimony by affirming that they signed their affidavits in his presence.

829. Nonetheless, the truth of the voters' unimpeached testimony was confirmed by Trey Smith's profuse sweating, inability to maintain his composure, inexplicable comments and the affidavits themselves; the signatures on which do not appear to match that of the voters.

830. Later, private and Attorney General Investigators obtained affidavits from voter Van Vranken and her husband as well the opinion of a privately retained certified **FDE** which all confirmed the voter's trial testimony that the signature Trey Smith notarized was not hers. Those statements and reports are incorporated herein by reference.

XXVIII. Trey Smith Acted Beyond Scope of Law by Prosecuting Alleged Acts that Do Not Constitute the Crimes Charged as a Matter of Law

831. The evidence before the Grand Jury established that all of the questioned AAB were signed or ostensibly signed by the voters when they were brought into the BOE for filing.

832. Under New York law, a document is a forgery only when its authenticity is misrepresented, not whenever it contains a falsehood or misrepresentations not relevant to the identity of the maker.

833. Therefore, for all the reasons discussed, Trey Smith prosecuted McDonough for alleged acts that do not constitute the forgery crimes charged as a matter of law.

834. Under well-established law the entry of false information not material to the authenticity of a document or done with the permission of its maker or his agent does not constitute the crime of forgery (or, therefore, its criminal possession).

835. Therefore, the entry of information on an AAB that the voter has already signed or ostensibly signed is not a forgery, even if that information is false because it does not affect the authenticity of the document; i.e. once it is signed it is the voter's AAB even if it is missing information required for the voter to receive the AB requested thereby.

836. The courts have stated that forgery is the "false making, not making falsely" (or completing) of a document and concerns its authenticity.

837. So, if an AAB is executed or ostensibly executed by a voter, the subsequent entry of false information on it does not constitute a forgery because it has already been authenticated, i.e. it remains the voter's even though it is "completed falsely" after its execution.

838. Conversely, the execution of an AAB after false information has been entered on it is not a forgery. In that scenario, the voter authenticates the AAB as his by signing it even though it is "made falsely" and may constitute a fraud if later used for an improper purpose (e.g. theft of a vote by fraud).

839. Therefore, a voter cannot allege a forgery if he signs a blank AAB that is later completed falsely, anymore than he could if he signs one that already contains false information. In either case, once the AAB is signed by the voter (or ostensible voter) the person who entered false information on it has

"completed falsely" that document, but did not commit a forgery.

840. Trey Smith did or should have known that well-established law.

841. Regardless, he is not entitled to absolute immunity for wrongfully prosecuting McDonough on falsely alleged acts that do not constitute forgeries in excess of the law.

842. As stated, there was no evidence or allegation that McDonough illegally voted any AB or forged any voter signature on any AAB or AB envelope.

843. In truth, McDonough did not handle most of the questioned AB documents.

844. Still, McDonough was wrongfully prosecuted for alleged acts he did not commit that do not constitute the crimes charged, while those others were not prosecuted for the hundreds of AB forgeries they committed even after the wrongful prosecution was exposed.

XXIX. Post-Indictment Acts in Continuation of Scapegoat Prosecution.

845. About a year after his appointment and the expenditure of hundreds of thousands of dollars in fees, costs and laboratory resources, only McDonough and LoPorto were indicted.

846. None of the Dem C/O alleged by Trey Smith in his application for DNA samples to have committed the AB forgery in conspiracy were indicted or prosecuted.

847. To the contrary, Trey Smith: (a) gave immunity, promises of non-prosecution or very favorable treatment to McGrath, DeFiglio, Couch,

Caird, Welch and Aldrich; (b) told Brown, McInerney and Dan Brown they would not be prosecuted; (c) did not investigate Michael Leonard and Richard Mason; and, (d) failed to contact Renna and Martiniano.

848. Upon information and belief, Trey Smith played the role of lead investigator in directing, conducting and participating in his investigation throughout all pre- and post-indictment stages, especially in the questioning of witnesses in an investigatory capacity.

849. Trey Smith continued to pursue the scapegoat prosecution in that capacity and role after McDonough's indictment through two trials.

850. After indictment, Trey Smith publicly pronounced that he "just followed the evidence" in his investigation.

851. However, the record facts prove that Trey Smith, acting in concert and conspiracy with the named defendants, intentionally and maliciously acted to deprive McDonough of his liberty without due process of the law by failing to obtain, ignoring and suppressing evidence sufficient to convict McInerney, Brown, McGrath and the other guilty Dem C/O for the crimes they committed and fabricating and orchestrating the false testimony of McGrath, O'Malley, Ogden, Brown, McInerney, Renna and Robillard to initiate and continue his wrongful indictment, arrest, prosecution and conviction as a scapegoat for alleged acts he did not commit that do not constitute the crimes charged as a matter of state law.

852. It is alleged the record facts prove Trey Smith, in that capacity, did so to avoid the arrest and

prosecution of the Dem C/O who committed serious election crimes.

853. It is also alleged that Trey Smith abused the criminal process by wrongfully obtaining a baseless and grossly over-charged indictment to coerce McDonough into pleading guilty in order to avoid the exorbitant cost of a protracted trial and likely imprisonment with no prospect of the jury hearing the testimony of those who would exonerate him if they did so.

A. *Trey Smith Had No Intention of Prosecuting the Guilty Dem C/O.*

854. On the day of arraignment, during an off-record discussion in chambers, Trey Smith told Court that he did not intend to present any other related matters before a Grand Jury.

855. Trey Smith denied that fact weeks later when McDonough exposed the scapegoat prosecution in a motion to disqualify and dismiss, which caused the supervisory NYSP concern.

856. Still later, the truth of the matter was confirmed when the supervisory NYSP disclosed Trey Smith told them in 2009, 2010 and 2011 that McInerney and Brown could not be prosecuted because the evidence was not sufficient to corroborate accomplice testimony.

857. McInerney and Brown admitted at trial after their ostensible prosecutions were forced in 2011 by the supervisory NYSP who took action in response to McDonough's motion that Trey Smith told them in 2009, 2010 and 2011 they would not be prosecuted.

858. Prior to indictment, Brown's attorney also admitted that fact before retracting it.

B. *Trey Smith and McNally Oppose Request to Have Illegal Appointment Declared Null and Void and County Officials Fail to Take Action.*

859. On February 24, 2011, McDonough moved to disqualify Trey Smith on the same basis of an appearance of impropriety that McNally disqualified himself in September 2009.

860. Trey Smith successfully opposed the motion on the basis that under state law a District Attorney may be disqualified only when the evidence shows an actual prejudice to the moving party or so substantial risk of prejudice that it cannot be ignored.

861. McDonough then took action to have Trey Smith's appointment voided on that same ground and well-established controlling state law.

862. Specifically, by letters dated May 26, 2011 and June 10, 2011 with attached legal brief, *("District Attorney Did Not Establish a Basis for his Disqualification and Therefore the County Court had No Authority to Appoint a Special District Attorney Pursuant to County Law § 701")*, McDonough gave Trey Smith, McNally, The County of Rensselaer and its executive and county officials notice that the disqualification of McNally and appointment of Trey Smith was unlawful, all of his acts were in excess of the legal authority and the jurisdictional lack of state constitutional legal authority could not be cured *nunc pro tunc* by subsequent motion, under clearly established state law. Those letters are incorporated herein by reference.

863. In those letters, McDonough urged the county to commence state court action to nullify Trey Smith's appointment and end the unlawful scapegoat prosecution of McDonough.

864. It is record fact that McNally failed to show legal basis for disqualification on proper written motion as required under well-established controlling state law.

865. Still, Trey Smith by letter dated May 31, 2011, urged the county not to commence an action to have his appointment nullified. That letter is incorporated herein by reference.

866. Thereafter, the county took no action to stop the wrongful prosecution of McDonough despite the dictates of the controlling state law that mandated the relief requested.

867. McDonough had no right under state law to commence a plenary proceeding to have Trey Smith's appointment nullified during a criminal prosecution or to perfect an interlocutory appeal from any adverse ruling on the issue before trial.

868. County officials should have taken that action at the latest when McDonough raised the issue, but they did not.

869. Thereafter, about June 13, 2011, McDonough filed a motion to dismiss the criminal charges on the basis that Trey Smith's appointment was unlawful.

870. Trey Smith and McNally successfully opposed that motion by ignoring well-established state law. The affirmations of McNally and Trey Smith dated July 7, 2011 in opposition to the motion are incorporated herein by reference.

871. The state trial court issued an order denying McDonough's motion in reliance on the arguments and claims of Trey Smith and McNally and in doing so, ignored and failed to follow the law of the case as well as controlling state law.

872. Upon information and belief, Trey Smith and McNally urged the County Attorney to not bring action to declare Trey Smith's appointment invalid and end the prosecution.

873. Consequently, Trey Smith continued the scapegoat prosecution and the county failed to take appropriate action to end it despite notice and knowledge of its unlawfulness.

C. *Improper Extrajudicial "Press Release" Statements with McDonough's Enlarged "Mug Shots" Conspicuously Displayed.*

874. On January 28, 2011, Trey Smith held a highly prejudicial press conference with the NYSP after McDonough's arraignment during which his guilt and the completion of the case was essentially announced. A copy of Trey Smith's written "Press Release" is attached as *Exhibit "H"* and incorporated herein by reference.

875. At his press conference, Trey Smith had an enlarged "mug-shot" of McDonough prominently displayed.

876. At the time, Trey Smith gave a press speech replete with statements likely to impair McDonough's right to a fair trial or made to advance his own personal interests, especially following the months of prosecution-biased media regarding the GJ investigation.

877. Upon information and belief, in making those statements Trey Smith violated applicable provisions of the N.Y.S. Code of Professional Responsibility that prohibited him from making extrajudicial statements that might have impaired McDonough's right to a fair trial or were intended to manipulate the media for the advancement of his own personal interests.

878. In his press statement, Trey Smith essentially publicly announced that McDonough had committed *"massive fraud perpetrated on the citizens"* of the county that deprived all of them of their most fundamental Constitutional right to vote and that he was guilty of the seventy-four (74) forgery related felonies charged.

879. Trey Smith stated, among other things, that: (a) his understanding of the case was first limited to the information produced at the *Lambertsen* hearing; (b) although it was clear that the rights of numerous voters were violated, it was not then clear who was responsible so he called on the NYSP to assist his investigation because of the extent of the fraud,need for investigation and possible forensic examination of evidence; (c) *"[to]gether with the [NYSP], [he] followed this case where the evidence led us. ... and even the evidence of those [elected officials] who have cooperated must be viewed critically in this search for the truth;"* (d) *"While some have admitted very limited responsibility ... not surprisingly no one has come forward to take full responsibility for the massive fraud perpetrated ..."*; (e) *Much of the truth ... was clouded when this investigation began. The hard work, diligence and patience of many have brought a good measure of clarity to the facts"*; (f) Inv. Ogden *"poured over the documentary evidence and discerned*

patterns in that evidence which led to the indictment unsealed today"; (g) *"evidence was presented over the course of six (6) days"*; and (h) all citizens were victimized by the [defendants'] misappropriation of the votes of others, which is a fundamental right of equality, and that anyone who minimizes the crimes thereby trivializes a principle of equality that our Founding Fathers believed to be a fundamental right of all human beings.

D. *Trey Smith Hired Robillard to Give Opinion that Supported False Testimony and To Not Perform Ink Analysis on Dickenson and Thirteen (13) Other Crucial AAB for Payment of One Hundred Thousand Dollars.*

880. On June 10, 2011, Trey Smith moved to compel the handwriting samplers from only McDonough and LoPorto, almost six months after indictment,

881. At the time, the only purported evidence in support of almost all of the charges against McDonough was the false and improper law enforcement opinion testimony of Ogden.

882. Nonetheless, Trey Smith did not seek handwriting samplers from McGrath, McInerney, Brown, Dan Brown or any other Dem C/O alleged in his application for DNA to have committed the AB forgery in conspiracy.

883. Once again, Trey Smith did not obtain the services of a law enforcement Forensic Document Examiner ("FDE") or handwriting expert.

884. Instead, on or about June 2011, Trey Smith retained purported private FDE Robillard to compare McDonough's handwriting with the false

AB Agent and Excuses on the questioned AAB and conduct ink and indentation forensic analysis of them.

885. Notably, a routine computer search at the time of hiring would have revealed that Robillard is identified as *"a paid professional liar for hire"* by one of his peers.

886. A routine computer search at the time would have revealed that Robillard's qualification to testify as an expert was the subject of the U.S. Supreme Court case of *Delaware v. Fensterer,* 474 U.S. 15 (1985) because he gave an opinion in support of a prosecution theory without being able to recall the scientific method he used to come to that conclusion.

887. A routine computer search at the time would have also revealed that Robillard was a supervisor of the FBI crime laboratory DNA Unit before its reorganization following highly-publicized investigations by the government concerning alleged improper hair and fiber, ballistics and other forensic laboratory services during which it was reported he admitted to ordering a subordinate to destroy the results of proficiency tests that were all substandard.

888. On September 26, 2011, McDonough gave handwriting samplers to Robillard.

889. However, the record facts prove that Robillard essentially became part of the prosecution team and acted closely with Trey Smith and Ogden to formulate purported opinion and indentation "evidence" in support of the their prosecution theory against McDonough.

890. Relevant letters and records prove that Trey Smith essentially told Robillard what findings and

opinions were needed to support every count of the indictment, witness testimony and purported prosecution theory against McDonough. A copy of Trey Smith's self-explanatory letter of July 22, 2011 which shows the same is attached as *Exhibit "I"* and incorporated herein.

891. The record facts prove Trey Smith did not request Robillard to perform a handwriting comparison concerning the AAB in accordance with the established standards of forensic practice to ensure a proper, objective handwriting and forensic examination of the AAB.

892. To the contrary, Trey Smith provided Robillard a copy of the indictment and a summary of what he called the "evidence" against McDonough related to each count thereof.

893. Trey Smith and Ogden told Robillard the theory of the prosecution and what AB Agent and Excuses were alleged to be false and have been written by McDonough.

894. Later, after the prosecutions of McInerney, Brown and Renna were forced by the supervisory NYSP, Trey Smith gave Robillard charts explaining AAB entry each Dem C/O admitted they made or alleged was written by McDonough by count of the indictment.

895. Trey Smith effectively gave Robillard the answers to the questions and paid him to give the opinion "needed" to support the theory of prosecution and the fabricated false testimony of McGrath, O'Malley, Brown and others.

896. On December 9, 2011, about five weeks before trial, Trey Smith disclosed the purported report of

the analysis of handwriting comparison by Robillard, dated December 1, 2011, in which he essentially gave the opinion that McDonough wrote the AB Agents and Excuses on almost all of the AAB for which he stood indicted.

897. In his report, Robillard gave the opinion that essentially all of the false AB Agent and Excuses on the questioned AAB were written by McDonough.

898. Robillard was paid approximately one-hundred thousand ($100,000.00) dollars for his handwriting comparison, ink and indentation analysis, report and opinion testimony before another Grand Jury and the trials of McDonough,

899. The disclosure provided was limited to the report of the expert and did not include any raw data, procedures utilized, standards applied or other documents regarding the matter. Trey Smith disclosed that voluminous information on the eve of trial after denying requests for its earlier disclosure and the curriculum vitae of Robillard.

900. Not surprisingly, Robillard's report supported the preposterous prosecution theory and Ogden's improper false opinion testimony before the Grand Jury in all material respects.

901. However, McDonough did not write the AB Agent and Excuses on all of these AAB and the handwriting on many of them does not appear to match his known samples or the ones Robillard dictated he write in faster than his normal writing speed when given.

902. In fact, as discussed below, Robillard, Ogden and Trey Smith purposely did not perform a relatively quick and inexpensive ink analysis on

those fourteen (14) AAB that McInerney, DeFiglio and Galuski obtained before September 10, 2009 that Brown, Dan Brown or another Dem C/O possessed and filed on September 10, 2009 and were completed entirely in the same ink because that evidence alone would have exonerated McDonough, disproved the prosecution theory and proved the falsity of the testimony of Robillard, Ogden and McGrath.

903. Upon information and belief, on or about June or July 2011, Robillard agreed and conspired with Ogden and Trey Smith to give fabricated false and improper forensic expert opinion testimony in furtherance of the conspiratorial scapegoat prosecution.

XXX. McDonough Exposed Scapegoat Prosecution in Post-Indictment Motion. Martiniano Disclosed Further Evidence of Scapegoat Prosecution.

904. On February 24, 2011, McDonough filed a motion to disqualify Trey Smith and dismiss the indictment in which he exposed the conspiratorial scapegoat prosecution to protect the guilty Dem C/O from prosecution, essentially by stating those record facts then known.

905. McDonough's motion was reported in the local news media and caused the scheme to scapegoat McDonough to begin to unravel.

906. At various times thereafter, Trey Smith gave patently incredible excuses for his conduct and attacked all who questioned it.

907. The record facts show that thereafter Trey Smith variously claimed, among other things, that: (a) Martiniano and Renna were mistakenly not

interviewed, not credible or refused to give statements; (b) admissible evidence was missed by mistake or rejected because it concerned matters beyond his authority; (c) McDonough's attorney was a liar, committed perjury and controlled an FBI Special Agent; (d) he had "trust issues" with the FBI Agent conducting an investigation into McDonough's complaint of scapegoat prosecution and claimed that agent had character flaws and engaged in misconduct to end the prosecution; (e) BOE employees Bugbee and Sweeney were complicit in McDonough's alleged crimes; and, (f) Sr. Inv. O'Brien had engaged in misconduct, been disciplined and forced to retire.

A. *Martiniano Disclosed Admissions Made by Brown and McInerney and McNally's Advice to Him Not to Come Forward.*

908. The next day, on February 25, 2011, Martiniano came forward and disclosed in a sworn statement to a private investigator that the NYSP never interviewed him, Brown and McInerney told him they were going to use the AAB gathered on September 14, 2009 to forge signatures onto AB envelopes and McNally told him that he should not contact the NYSP or Trey Smith and disclose the facts he knew about the matter because *"it will all be over soon."*

909. Immediately, Trey Smith publicly impugned Martiniano's credibility and integrity in the news reports and court papers.

910. At the same time, Brown publicly called Martiniano a liar and denied any guilt during a press

conference, but Brown's comments were proven to be lies.

911. Martiniano's statements later proved to be true.

912. Still, Trey Smith later called Martiniano as a witness at trial only to impeach him.

913. Trey Smith took no action against McInerney or Brown with that new evidence.

914. Similarly, when McDonough in an affidavit filed with the court disclosed the facts of September 24, 2009 which incriminated Brown and McInerney, Trey Smith essentially defended Brown and McInerney in a memo to Ogen dated February 28, 2011, with the following comment: *"I think we have already established that he has a credibility problem; I what find really interesting is how he is now really blowing in not just McInerney, but John Brown as well."*

915. Upon information and belief, many of the voluminous memorandum, letter, emails and other records maintained by Trey Smith and the NYSP concerning Trey Smith's investigation contain contradictory and inconsistent statements and other comments made by Trey Smith and Ogden that evidence the alleged conspiracy and its objectives.

B. *McDonough and Newspaper Reporter Discovered Move Evidence of the Guilt of McInerney and Renna That Trey Smith and Ogden Once Again Ignored.*

916. After indictment, McDonough reviewed numerous AAB on file at the BOE and found nineteen (19) filed in the 2007 general election on

which McInerney was the AB Agent, all of which also appeared to have been completed in the same distinct handwriting as the registration card of McInerney and his mother Shirley McInerney.

917. At that time, McDonough also found thirty-seven (37) AAB filed in the 2008 elections that were completed in McInerney's handwriting and he was the AB Agent on them.

918. Many of those 2007 and 2008 also had similarly stated vacation Excuses.

919. As stated, in 2010 Bugbee gave Trey Smith many of those 2007 and 2008 AAB.

920. Trey Smith told Bugbee that the NYSP was not interested in past AB forgery and he did not have the authority to prosecute those crimes.

921. On or about 2011 but prior to indictment, McDonough's counsel provided many of those same AAB to Trey Smith and was given the same response.

922. Notably, the office of district attorney was the most significant local election in 2007 and it was determined by only a slight margin.

923. None of those 2007 and 2008 AAB were completed by McDonough or Bugbee.

924. At that time, however, a Troy Record newspaper reporter needed only to approach three of those voters to discover from them that their AAB had false information and signatures.

That newspaper's related March 7, 2011 article is incorporated by reference.

XXXI. NYSP Learned Trey Smith Lied About McInerney and Brown. NYSP and FBI Commenced Investigations without Trey Smith's Knowledge. NYSP and FBI Interview McDonough without Trey Smith's Knowledge. Trey Smith Quashes Federal Investigation. McInerney Forced to Enter Into Favorable Cooperation Agreement.

A. *Supervisory NYSP Questioned Trey Smith's Conduct.*

925. Upon information and belief, Sr. Inv. O'Brien began to question Trey Smith's actions in the fall of 2009 when it became apparent he focused his investigation on McDonough.

926. As stated, at the time, Trey Smith told the supervisory NYSP that McInerney and Brown could not be prosecuted due to lack of evidence to corroborate accomplice testimony.

927. Upon information and belief, once McDonough exposed the falsity of that statement and other relevant facts in his post-indictment motion, the supervisory NYSP again had concerns about the investigation, prosecution and Trey Smith's conduct.

928. Upon information and belief, the supervisory NYSP then began to take action to conduct a proper investigation and prosecution of the AB forgery.

B. *McDonough Made Complaint about Criminal Violation of Federal Civil Rights. FBI Assigned to Investigate Scapegoat Prosecution and/or Past AB Forgery.*

929. On or about April 2011, McDonough contacted the U.S. Attorney's Office through, counsel and

requested an FBI investigation into the criminal violation of his civil rights by the unlawful prosecution and the decades of AB forgery DeFiglio disclosed to Trey Smith.

930. In response, on or about May 2011, the FBI, through an agent in the public corruption unit, began to investigate McDonough's complaint and past AB forgery.

931. It is known that FBI Special Agent McDonald was assigned to conduct that investigation at the request of the US Attorney's Office.

C. Trey Smith Acted to Derail FBI Investigation

932. Upon information and belief, on or about April 26, 2011, Trey Smith learned from a news reporter that the FBI was conducting a federal investigation concerning the matter.

933. Trey Smith immediately sent letters to the U.S. Attorney Office and FBI dated April 27, 2011 and April 28, 2011, respectively.

934. Those letters show that Trey Smith was concerned about an FBI investigation because it would discredit his work and for other reasons discussed. See, Exhibit A.

935. Trey Smith publicly stated that he welcomed a federal investigation or take-over of the matter and sought that assistance in the past but it was declined

936. Upon information and belief, however, Trey Smith took action to derail it.

937. Upon information and belief, Trey Smith leaked to the newspapers variously that there was no federal investigation, the U.S. Attorney confirmed there was no investigation, he was aware of the FBI

investigation, and the FBI was assisting the NYSP in his investigation.

938. Upon information and belief, Trey Smith falsely told Bugbee that he was working in conjunction with the NYSP, FBI and U.S. Attorney's Office in investigating the AB forgery.

939. Upon information and belief, Trey Smith leaked the name of the FBI agent conducting the investigation to impair his ability to get witnesses or suspects to talk to him.

940. Trey Smith leaked information to the news media that impaired the federal investigation and blamed the FBI Special Agent for doing it, but then admitted he did it.

941. Upon information and belief, at all times relevant, Trey Smith acted to keep his co-conspirators from cooperating with the FBI and disclosing the scapegoat prosecution.

D. *Supervisory NYSP Learned Trey Smith's Assertion that McInerney and Brown Could Not Be Prosecuted was False. NYSP Began Independent Investigation to Ensure Their Arrest and Prosecution.*

942. Upon information and belief, on or about May 21, 2009 or soon thereafter, the FBI also confirmed that Trey Smith's statement to the NYSP that McInerney and Brown could not be prosecuted was not true because, in fact, the voter testimony and forged AB documents were sufficient to corroborate the testimony of any accomplice, especially DeFiglio.

943. Upon information and belief, on or about May 25, 2011, the supervisory NYSP began to conduct an

independent investigation of McInerney without the knowledge of Trey Smith due to their frustration, concern, dissatisfaction and lack of trust in him.

944. Upon information and belief, from on or about May 25, 2011 until on or about August 4, 2011, the supervisory NYSP directed a rudimentary investigation that led to overwhelming proof of the guilt of McInerney, Brown and Renna.

945. The NYSP obtained that evidence by simple investigation and without the need for costly DNA or forensic expert services.

946. That evidence consisted of the same known and easily discoverable testimony and AB documents that Trey Smith ignored or purposely did not obtain throughout.

947. The NYSP gathered AAB, BOE records and statements from witnesses, including Suozzo that was sufficient to convict McInerney for the forgery of about fifty (50) AAB that appeared to have been entirely forged in his handwriting. Those AAB, BOE records and statements are incorporated herein by reference.

F. *Sr. Inv. O'Brien and FBI Interviewed McDonough without Trey Smith's Prior Knowledge on June 1, 2011.*

948. Upon information and belief, at the same time that Trey Smith took action to derail the FBI investigation, Sr. Inv. O'Brien sought the assistance of the FBI and, it is believed, looked for the federal authorities to take the case over.

949. Consequently, On May 27, 2011, the FBI requested McDonough to meet with the FBI and Sr. Inv. O'Brien at the FBI building to be interviewed.

950. On June 1, 2011, McDonough met with Sr. Inv. O'Brien and FBI at their request and was interviewed about the unlawful prosecution and Ms knowledge of the activities of the Dem C/O related to the AB forgery.

951. Sr. Inv. O'Brien expressly conditioned the meeting upon McDonough's agreement not to disclose it to Trey Smith or any person until the NYSP task was completed.

952. Trey Smith had no knowledge about that meeting until Ogden informed him of it on or about August 2, 2011.

953. McDonough was informed at that time that the supervisory NYSP were aware that Trey Smith did not properly investigate or prosecute the matter.

954. Obviously, the meeting would never have taken place if the NYSP supervisory personnel had confidence and trust in Trey Smith's investigation and related conduct.

955. Its occurrence alone is beyond extraordinary and speaks volumes.

956. the NYSP later again showed its lack of confidence and trust in Trey Smith's investigation and conduct by arresting McInerney without his prior knowledge.

G. Trey Smith Meets with U.S. Attorney Office and FBI. Declared Had Trust Issues with FBI Agent and Quashed Independent FBI Investigation on June 2, 2011.

957. On June 2, 2011, Trey Smith met with the FBI, U.S. Attorney's Office and NYSP.

958. Upon information and belief, Trey Smith demanded that meeting purportedly for the primary reason of discussing a coordination of federal and state investigations into the AB forgery and, especially, the prospect of offering McInerney a cooperation agreement.

959. Upon information and belief, however, Trey Smith actually then sought to quash the federal investigation and did so at that time.

960. Upon information and belief, at that meeting, although Trey Smith claimed that he welcomed a federal investigation he stated that he had "trust issues" with the FBI Agent conducting it because he had commenced an investigation, interviewed McDonough's attorney and interviewed DeFiglio and other witnesses without his knowledge.

961. Upon information and belief, at that meeting, Ogden also expressed concern that if the FBI interviewed witnesses or subjects and gave cooperation agreements it might impair Trey Smith's (NYSP) investigation.

962. Upon information and belief, at that meeting, the FBI told Trey Smith that the attorneys for several suspects said their clients did not trust Smith.

963. Upon information and belief, in fact, Sr. Inv. O'Brien did not trust Trey Smith and the supervisory NYSP were dissatisfied with his investigation and prosecution of the matter.

964. At that meeting, Trey Smith was required to admit that there was more than enough corroboration to prosecute and convict McInerney, Brown and others.

965. At that meeting, Trey Smith indicated that his investigation would be done soon.

966. However, at that time, Trey Smith also quashed the independent FBI investigation into McDonough's complaint of public corruption by requesting that it no longer actively investigate the matter independently but merely coordinate and assist the NYSP. A copy of unclassified but redacted FBI reports dated June 3, 2011 (3 pages), June 9, 2011 (2 pages), June 13, 2011 (1 page), July 20, 2011 (1 page) and August 5, 2011 (1 page) that confirm the above facts are attached as *Exhibit "J"* and incorporated herein by reference.

967. Thereafter, Trey Smith continued to tell the supervisory NYSP that the arrest and prosecution of McInerney, Brown and others was imminent.

968. Upon information and belief, however, once Trey Smith realized that Sr. Inv. O'Brien was aware he had lied about not being able to prosecute McInerney and Brown and that it was inevitable they were going to be arrested, he made arrangements for McInerney to plead guilty on or about July 15, 2011, to an SCI charging a felony (or misdemeanor) in satisfaction of all charges that could be filed before any cooperation was provided.

969. Thus, Trey Smith attempted to feign incompetence or poor exercise of judgment by giving McInerney the same immunity with impunity that he gave McGrath.

970. However, Sr. Inv. O'Brien prevented that disposition.

H. *McInerney Entered Cooperation Agreement on July 22, 2011*

971. Thereafter, on July 22, 2011, Trey Smith gave McInerney a cooperation agreement pursuant to which he was required to provide complete truthful cooperation in return for a plea of guilty to one felony and ninety-day work order in satisfaction of all charges related to the 2009 AB forgery, without the waiver of the right to appeal.

972. Upon information and belief, however, McInerney would not agree to provide the required cooperation unless the NYSP and FBI agreed not to pursue his arrest or prosecution for any of the AB forgery he committed in past years, especially 2007.

973. Upon information and belief, the supervisory NYSP and FBI would not agree to abide by the terms of McInerney's cooperation agreement unless he was fully debriefed and it was determined that his information was complete, truthful and accurate.

974. Upon information and belief, Trey Smith and McInerney continued to postpone any debriefing because they knew that McInerney could not tell the truth without disclosing the conspiracy to scapegoat prosecute McDonough and incriminate all those involved in the AB forgery, conspiracy and the cover-up of them.

I. *Trey Smith Told That FBI Interviewed McDonough without His Knowledge Trey Smith Sent Email to Ogden Attacking FBI Agent, Defense Attorney and Implying that McNally*

May Have Committed AB Forgery with McInerney.

975. Upon information and belief, on August 2, 2011, FBI Agent McDonald told Trey Smith, with agreement of Sr. Inv O'Brien, that the proposed plea bargain was not satisfactory, proper criminal justice procedure required McInerney to provide complete, truthful information about any crimes he may have committed before he received any consideration regarding his arrest, prosecution or sentencing, including any AB forgery he committed in 2007 or 2008.

976. Upon information and belief, the supervisory NYSP and FBI knew that they already had obtained and could gather more evidence to convict McInerney of many AB forgery and other serious elections crimes he committed in 2007 and 2008.

977. Upon information and belief, Trey Smith also staged a confrontation with FBI Special Agent McDonald at a scheduled initial debriefing of McInerney held on or about August 2, 2011, so that it abruptly ended and he had time to take action to derail the federal investigation, protect McInerney from prosecution for elections crimes committed in 2007 and 2008 and continue the wrongful prosecution of McDonough.

978. Upon information and belief, on August 2, 2011, Ogden told Trey Smith that the FBI had already interviewed McDonough without his knowledge.

979. As a result, on August 3, 2011, at 5:06 a.m., Trey Smith sent an email to Ogden in which he postulated a conspiracy theory that ironically applies

to the scapegoat prosecution and transposed baseless and absurd allegations of criminal and/or unethical conduct upon FBI Agent McDonald, McDonough and his attorney. A copy of Trey Smith's email is attached as *Exhibit "K"* and incorporated herein.

980. Upon information and belief, Trey Smith succumbed to the pressure of continuing the scapegoat prosecution, the cover-up and the protection of McInerney and others.

981. Upon information and belief, in his panic, Trey Smith may have provided the actual reason for the scapegoat prosecution and its cover-up by stating: "I *would assume that McDonough ... implicated McNally in a conspiracy with McInerney to win the DA's race in 2007. All McDonough would have to do is say that he overheard, [them] discussing [it], and that would be sufficient for the Feds to bring conspiracy allegations against McNally. I also assume that presently McDonald [sic] has nothing to corroborate McDonongh 's allegations. "*

982. In his memo, Trey Smith essentially told Ogden and Fancher they had to decide where they stood concerning their investigation and impugned the integrity of the FBI agent who sought to obtain McInerney's complete truthful information before being immunized by stating that he was a *"willing instrument"* of defense counsel and *"very strange individual"* who *"suffered from a number of defects, notably judgment and ambition."*

983. Upon information and belief, Trey Smith was doing all he could to prevent McInerney from telling the truth by giving him the same deal he gave McGrath; i.e. immunity with impunity before he

gave any information that in ipso factor breach of the cooperation agreement that would never be rescinded or enforced. And, that is precisely what they later did.

984. Later, to continue the wrongful prosecution, Trey Smith falsely told the trial court that he had prior knowledge of the NYSP and FBI interview of McDonough and had directed Sr. Inv. O'Brien to ask specific questions but he purposely did not when, in truth, Trey Smith had no prior knowledge of the meeting which was conditioned upon its non-disclosure to him.

985. During the trial, Trey Smith accused Sr. Inv. O'Brien of misconduct related to another NYSP investigation and was forced to retire.

986. In any event, McInerney had not provided any cooperation by August 5, 2011.

987. Therefore, on or about August 5, 2011, a NYSP Captain told the FBI that the NYSP would no longer wait for Trey Smith to make decisions concerning the prosecution of McInerney and others before it took its own action. See, FBI Reports, Exhibit J, above.

J. McDonough Gave NYSP AAB that Proved Renna Forged AAB for Testa.

988. In that regard, after McDonough was wrongfully indicted for the forged Testa AAB, he discovered that the distinctive handwriting on that AAB also appeared to be on other AAB and party enrollment cards for 2007 and 2008 that were released to, or filed by, Renna.

989. McDonough provided copies of about five (5) of those applications to the FBI and NYSP when they met in July 2011.

990. Later in 2011, McDonough's counsel gave the supervisory NYSP copies of fifteen (15) other AAB filed in 2007 that also appeared to be fully or partially completed in the same handwriting that appeared to be on the Testa AAB.

991. Upon information and belief, the NYSP then easily obtained evidence sufficient to convict Renna for the forgery of those documents, including the Testa AAB, without the need for forensic or DNA evidence.

992. Upon information and belief, the NYSP also obtained the depositions and forged AAB of voters DeFabio, Tangredi and Petit that alone was sufficient evidence to convict Brown.

XXXII. Supervisory NYSP Independent Investigation Led to Arrest of McInerney and Imminent Arrest of Brown and Renna without Trey Smith's Knowledge.

993. Consequently, on August 8, 2011, the supervisory NYSP arrested McInerney on several felony complaints for AB forgeries he committed in 2008 and/or 2007, The related accusatory instruments are incorporated herein by reference.

994. At that time, the supervisory NYSP also told Trey Smith that the arrest of Brown and Renna was imminent.

995. Trey Smith did not hold a press conference to publicly disgrace or announce the conviction of the most prolific AB forger in county history.

996. Trey Smith did not indict McInerney on even only dozens of the easily provable hundreds of AB forgery crimes he committed, or seek his imprisonment.

997. Instead, Trey Smith quietly arranged his guilty plea to one felony *which he initially* publicly denied was a jurisdictionally defective conviction and proffered a fallacious argument in court papers for its validity, but then admitted the defect in communications with the NYSP. Those papers related to that matter are incorporated herein by reference.

XXXIII. Trey Smith's Actions to Continue Prosecution and Cover-up Conspiracy.

998. Upon information and belief, as a result of the FBI and supervisory NYSP actions Trey Smith was no longer able to keep his promise not to prosecute McInerney and Brown.

999. Upon information and belief, at all times while the NYSP and FBI conducted their own investigations, Trey Smith took action to continue the scapegoat prosecution, cover-up the conspiracy and protect McInerney, Brown and Renna from meaningfully prosecution and, especially, keep them from telling the truth that would have exonerated McDonough and further exposed their conspiracy to scapegoat prosecute him.

1000. Upon information and belief, there is no other plausible explanation for the otherwise inexplicable later conduct of Trey Smith, McInerney, Brown and Renna, as discussed.

A. *McNally Disqualify Himself and Trey Smith Obtained an Order Extending His Authority to*

Protect McInerney from Prosecution for 2007 and 2008 Crimes.

1001. In reaction to the NYSP arrest of McInerney, in July 2011, more than a year after telling Bugbee and McDonough's attorney that he could not do so, Trey Smith perfunctorily had McNally again disqualify himself without written motion or legal basis and obtained an Order extending his authority to prosecute McInerney for the AB forgery he committed in 2007 and 2008. The relevant letters of Trey Smith and McNally to the court dated July 18, 2011, and July 19, 2011, respectively, are incorporated herein by reference.

B. *Trey Smith Interviewed McInerney without the NYSP or FBI Present*

1002. Upon information and belief, for a period of time thereafter, Trey Smith and McInerney's attorney told the supervisory NYSP that McInerney would schedule a meeting to provide complete truthful information to the NYSP and FBI prior to his guilty plea.

1003. Upon information and belief, however, Trey Smith misled the supervisory NYSP for a period of time so that he could meet with McInerney and fabricate his false statement.

1004. Upon information and belief, on a number of occasions, Trey Smith met with McInerney for hours without the knowledge of the supervisory NYSP or FBI and "went over" the purported cooperation he was going to provide.

XXXIV. Fabricated False Statements of McInerney, Brown and Renna.

A. *Trey Smith Fabricated McInerney's False Statement to Continue Prosecution.*

1005. Thereafter, when the NYSP and FBI finally met with McInerney to obtain his cooperation, Trey Smith announced that he had already done so.

1006. Upon information and belief, Sr. Inv. O'Brien and the FBI present had reasonable cause to believe that McInerney's purported cooperation was not complete or truthful.

1007. Upon information and belief, Sr. Inv. Ogden had reasonable cause to believe that the information McInerney gave was materially false and previously fabricated with Trey Smith.

1008. Upon information and belief, Trey Smith allowed McInerney to prepare his sworn written statement over a period of time with the assistance of his attorney and/or Trey Smith. The statements that were drafted and/or signed by McInerney and any related correspondence is incorporated herein by reference.

1009. Upon information and belief, Trey Smith fabricated the false statement of McInerney to ensure that he would not tell the truth or provide complete information about all the relevant facts but, instead to be as consistent as possible with other false testimony fabricated against McDonough, support the prosecution theory and continue the scapegoat prosecution.

1010. Upon information and belief, McInerney gave his false statement in furtherance of the wrongful prosecution of McDonough and to cover-up the conspiracy.

1011. Upon information and belief, McInerney did not tell the truth about the AB forgery because it would have exonerated McDonough, proven the guilt of all the Dem C/O for the AB forgery and/or perjury and proven the conspiratorial scapegoat prosecution.

1012. Upon information and belief, McInerney intentionally failed to exonerate McDonough, fully incriminate the Dem C/O who committed the AB forgery in conspiracy with him or admit that the AB forgery was committed by the Dem C/O acting in conspiracy.

1013. In particular, McInerney denied having forged the AB documents of Suozzo even though he did so then in conspiracy with the other Dem C/O as well as in the past and was the only person to ever have had any contact with him.

1014. At trial, Suozzo also essentially testified that he was recruited by McInerney to vote by AB and he had contacted him in the past, but not in 2009.

1015. Upon information and belief, McInerney forged the Suozzo AAB in conspiracy with other Dem C/O, knew who had written false information on it and thereafter forged his AB.

1016. Upon information and belief, however, Trey Smith "needed" McInerney to tell the fabricated falsehood that he did not forge the Suozzo AB because McDonough's DNA was allegedly found on it and his false testimony allowed for an inference in support the prosecution theory that it was forged by McDonough at the BOE.

1017. On the other hand, if McInerney told the truth it would have completely debunked the prosecution theory and itself exonerate McDonough.

1018. Among other false statements, McInerney falsely incriminated McDonough by saying that he gave McDonough the names of several voters, including Robertson, to falsely vote and that he was *"certain that those AB never left the BOE, and that they were forged by McDonough while in his office."* Ogden's memo dated November 1, 2011 to the supervisor of the NYSP lab confirming the same is incorporated herein by reference.

1019. At the time, McInerney also did not admit that he had helped Jermaine Joseph and Donnell Paterson, two Hudson Valley College students, establish city residency so they could get reduced tuitions, paid them to enroll in the WFP in 2009 and forged their AB documents.

1020. McDonough and O'Malley had no knowledge about those facts at anytime. B. *Trey Smith Fabricated Renna's False Statements to Continue Prosecution.*

1021. Upon information and belief, on or about September 20, 2011, and October 18, 2011, Renna was interviewed by Ogden and Fancher.

1022. Thereafter, Renna gave sworn written depositions on October 20, 2011, and November 9, 2011. Renna's two depositions are incorporated herein by reference.

1023. In his October 20, 2011 deposition, Renna confirmed that he admitted to having forged the Testa AAB in 2009 because McInerney asked him to help *"get votes."*

1024. In his October 20, 2011 deposition, Renna also confirmed that he admitted to having forged at least eleven (11) AAB in the 2007 general election.

1025. In his October 20, 2011 deposition, Renna stated that he almost always gave the AAB that he filed at the BOE to McDonough or Mary Sweeney because he *"knew they would not be questioned"* but admitted that he never discussed forging AB or AAB with anyone or witnessed anyone forge them in his presence.

1026. Therefore, it is clear that Renna was asked specifically about McDonough.

1027. In his November 9, 2011, deposition Renna admitted that he knew voter Robertson and entirely forged her AAB and AB.

1028. In that deposition, Renna also stated that he was "relatively certain that [he] completed [] Testa's [AB] while [he] was in [] McDonough's office ... [McDonough] was in the office when [he] voted the [AB]" and did not recall completing the Robertson AB at that time but looking at the documents it appears that he completed the AB for each of those voters then.

1029. Upon information and belief, on one or more occasions prior to November 9, 2011, and thereafter, Trey Smith directly and/or indirectly through McInerney and/or others acted in conceit and conspiracy with Renna to fabricate the false statements and testimony he gave on October 20, 2011 and thereafter to incriminate McDonough in support of the prosecution theory and continuation of Ms wrongful prosecution and conviction.

1030. Upon information and belief, prior to December 5, 2011, Renna was, in fact, represented in the negotiation of his cooperation agreement and plea bargain by McInerney's attorney or an attorney from his office.

1031. Upon information and belief, subsequent to September 20, 2011, Smith and McInerney's attorney engaged in plea negotiations on behalf of Renna.

1032. Upon information and belief, on one or more occasions prior to November 9, 2011, and at times thereafter, Trey Smith met with Renna to fabricated his false testimony.

1033. On December 5, 2011, Renna executed a cooperation agreement pursuant to which he was required to provide complete truthful cooperation in return for a plea of guilty to one felony and sentenced of two hundred (200) hours community service in satisfaction of his 2009 AB forgery. Renna's cooperation agreement is incorporated herein by reference.

1034. Thereafter, on or about December 6, 2011, Renna testified before a Grand Jury considering charges against Galuski, Campana and Brown and gave additional fabricated false testimony against McDonough.

1035. At the Grand Jury, Renna falsely testified that he entirely forged the AAB and AB of Testa and Robertson on September 14, 2009, in front of McDonough while in his office and that he trace forged the voter signatures from registration cards McDonough gave him. Renna's relevant Grand Jury testimony is incorporated herein by reference.

1036. In truth, Renna knew that McDonough had only handled the Testa and Robertson AB documents in assisting him at the counter when he filed their AAB.

1037. That fact also explains why Trey Smith was so persistent in having the NYSP lab use new and "better" methods to test for the presence of DNA on those specific AB envelopes.

1038. However, certain NYSP memos show that although McInerney and Renna were obviously acting in concert and conspiracy with Trey Smith to continue the wrongful prosecution of McDonough through their fabricated testimony, they could not keep the false stories straight.

1039. Thus, for example, in a November 1, 2011 memo to the supervisor of the NYSP lab, Ogden said that McInerney told him that he gave the name of several voters, including Robertson, to McDonough for AB voting and that he was *"certain that those AB never left the BOE, and that they were forged by McDonough while in his office."*

1040. Yet, in a December 26, 2011 memo to the lab supervisor, Ogden stated that Renna told him that *"he had forged the ballot inside [the Robertson AB envelope]."* Those emails are incorporated herein by reference.

1041. Those record facts make it clear that Trey Smith, McInerney and Renna fabricated false testimony against McDonough in furtherance of their conspiracy, but also failed to get their stories straight quickly enough under the pressure of the actions of the supervisory NYSP.

1042. It is also clear from the record facts that the inference Trey Smith intended to have drawn from the fabricated false testimony of McInerney and Renna was that the Suozzo, Robertson and Testa AB envelopes, and, therefore, all the AAB in question, were forged by McDonough in the BOE "forgery factory."

1043. Again, voters Robertson and Testa were not public housing residents and there never would have been anything to connect Renna to the forgery of their AB envelopes or his involvement in said AB forgeries if McDonough and the supervisory NYSP did not force his prosecution because Trey Smith and Ogden coincidentally "missed" him during their investigation (as they did Martiniano).

1044. Similarly, voter Suozzo was not a public housing voter and if McInerney was not prosecuted as promised he would never have talked about that forged AB.

1045. However, as discussed, that orchestration and fabrication of false evidence was ruined by McDonough when he discovered that the Testa and Robertson AAB were forged entirely in Renna's handwriting and Suozzo's 2008 and 2007 AAB had been forged in McInerney's handwriting, which led Sr. Inv. O'Brien to force their prosecutions.

1046. Upon information and belief, Trey Smith fabricated the false statement and testimony of Renna to not tell the truth or provide complete information about all the relevant facts, but instead to be as consistent as possible with other false testimony fabricated against McDonough, support

the prosecution theory and continue the scapegoat prosecution.

1047. Upon information and belief, Renna gave his false statement and testimony in furtherance of the wrongful prosecution of McDonough and to cover-up the conspiracy.

1048. Upon information and belief, Renna intentionally gave materially false information about the AB forgery in his statement in order to continue the scapegoat prosecution.

1049. Upon information and belief, Renna did not tell the truth about the AB forgery because it would have exonerated McDonough, proven the guilt of all the Dem C/O for the AB forgery and/or perjury and proven the conspiratorial scapegoat prosecution.

1050. Upon information and belief, Renna intentionally failed to exonerate McDonough, fully incriminate the Dem C/ O who committed the AB forgery in conspiracy with him or admit that the AB forgery was committed by the Dem C/ O acting in conspiracy.

C. *Trey Smith Fabricated Brown's False Statements to Continue Prosecution.*

1051. Upon information and belief, Trey Smith was forced by the action of McDonough, the supervisory NYSP and FBI to begin Grand Jury proceedings against Galuski and Campana in the fall of 2011.

1052. Upon information and belief, Trey Smith leaked to local newspapers that he was also presenting a case against Brown at the same time.

1053. Upon information and belief, Brown testified before the Grand Jury with counsel pursuant to a waiver of immunity on October 27, 2011 and December 14, 2011.

1054. Upon information and belief, Brown's appearance before the Grand Jury was a ruse because the supervisory NYSP were already aware that Brown forged the AB documents of DeFabio, Tangredi and Petit that was sufficient to convict him.

1055. The NYSP obtained affidavits from DeFabio and Tangredi on or about December 2, 2011, after Brown testified before the Grand Jury on October 27, 2011.

1056. Upon information and belief, on December 6, 2011, Brown executed a cooperation agreement pursuant to which he was required to provide complete truthful cooperation in return for a plea of guilty to one felony and be sentenced solely in discretion of the Court with Trey Smith's recommendation of up to six months incarceration and five years probation in full satisfaction of his 2009 AB forgery and perjury. Brown's cooperation agreement is incorporated herein by reference.

1057. On that same day, Brown gave a sworn written deposition, Brown's deposition is incorporated herein by reference.

1058. In his deposition and before the Grand Jury, Brown gave fabricated false testimony about what happened in McDonough's office on September 14, 2009 that was consistent with the false Grand Jury testimony of McGrath and O'Malley.

1059. In particular, Brown falsely stated in his deposition that: (a) he saw McGrath gave

McDonough an AAB and what seemed to be a false Excuse for an older voter and McDonough then wrote information on that AAB; (b) he was in McDonough's office for about forty (40) minutes during which he saw the AAB he brought to the BOE sitting on McDonough's desk; (c) he saw McDonough writing on documents but could not say for sure that they were those AAB; and, (d) he saw O'Malley come in and out of the office but did not recall him sitting at a desk or writing on any AAB.

1060. Brown's false testimony was essentially consistent with the false testimony of McGrath and O'Malley in support the prosecution theory that McDonough falsely completed all the AAB Brown filed that day, but it was otherwise materially contradictory.

1061. Upon information and belief, on one or more occasions prior to December 6, 2011, and at times thereafter, Trey Smith met with Brown to fabricated his false testimony.

1062. Upon information and belief, Trey Smith fabricated the false statement and testimony of Brown to not tell the truth or provide complete information about all the relevant facts, but instead to be as consistent as possible with other false testimony fabricated against McDonough, support the prosecution theory and continue the scapegoat prosecution.

1063. Upon information and belief, Brown gave his false statement and testimony in furtherance of the wrongful prosecution of McDonough and to cover-up the conspiracy.

1064. Upon information and belief, Brown intentionally gave materially false information about the AB forgery in his statement in order to continue the scapegoat prosecution.

1065. Upon information and belief, Brown did not tell the truth about the AB forgery because it would have exonerated McDonough, proven the guilt of all the Dem C/O for the AB forgery and/or perjury and proven the conspiratorial scapegoat prosecution.

1066. Upon information and belief, Brown intentionally failed to exonerate McDonough, fully incriminate the Dem C/ O who committed the AB forgery in conspiracy with him or admit that the AB forgery was committed by the Dem C/ O acting in conspiracy.

XXXV. Fabricated False Complaint Made Against Sr. Inv. O'Brien. Trey Smith Questioned Sr. Inv. O'Brien re FBI Investigation. Trey Smith Asked if FBI "Bugged His Office" or Tapped His Telephones.

1067. Upon information and belief, sometime after Trey Smith learned that the FBI and Sr. Inv. O'Brien interviewed McDonough, that Sr. Inv. O'Brien was conducting an independent investigation into the AB forgery and arrested McInerney without his prior knowledge, Trey Smith and Ogden orchestrated a false personnel complaint and/or departmental charges to be made against Sr. Inv. O'Brien concerning an unrelated matter.

1068. Upon information and belief, that false complaint and/or charges was made by Trey Smith with the assistance of Ogden to quash the independent NYSP investigation, impugn the

credibility of Sr. Inv. O'Brien when subpoenaed by McDonough to testify about the matters at trial and to force him to answer questions about a pending FBI investigation.

1069. Subsequently, on the date or dates known to Trey Smith, Ogden and the NYSP, Sr. O'Brien was ordered by his superiors to submit to a compelled interrogation by Trey Smith about the purported leaking of information concerning Trey Smith's investigation.

1070. Upon information and belief, however, when Trey Smith questioned Sr. Inv. O'Brien, he asked questions solely about his knowledge of the FBI investigation and, specifically, whether the FBI had *"bugged his office"* or *"tapped his phone"* during its investigation of McDonough's complaint of public corruption, so it was stopped by the NYSP.

1071. Upon information and belief, during the interrogation, Trey Smith was nervous and perspired so profusely that sweat dripped down his face and wet his clothes.

XXXVI. Extraordinarily Favorable Plea Agreements and Defective Convictions.

1072. Subsequently, Campana and Galuski were indicted for a few felonies each.

1073. Thus, McDonough forced the arrest and/or ostensible prosecutions of McInerney, Brown, Remia, Campana and Galuski almost two years after the AB forgery they committed in conspiracy but only because of the integrity and commendable actions of Sr. Inv. O'Brien and an FBI agent, both of whom Trey Smith labeled as being criminals.

1074. However, Trey Smith gave immunity agreements to one of the three primary perpetrators and extraordinarily favorable cooperation agreements and plea bargains to the other two whom he initially told would not prosecute after misleading and lying to the NYSP.

1075. Trey Smith also blindly accepted the denial of guilt from about seven other people the evidence directly implicated in criminal responsibility.

1076. Thereafter, Trey Smith gave extraordinarily favorable plea bargains, sentences and other dispositions to those Dem C/O at least ostensible prosecuted.

A. *Trey Smith Arranged a Jurisdictionally Defective Conviction for McInerney.*

1077. Upon information and belief, as stated, despite the fact that McInerney committed hundreds of readily provable AB forgery crimes in 2009, 2008 and 2007, Trey Smith agreed to accept one felony conviction and a sentence of a minimum number of hours work order.

1078. Upon information and belief, Trey Smith also arranged for McInerney to plead guilty before any cooperation was given, as stated.

1079. However, Trey Smith cancelled that plea deal after the supervisory NYSP indicated that they would then arrest McInerney for AB forgery he committed in 2007 and 2008 because they were not satisfied with the manner in which the matter was being handled.

1080. Upon information and belief, Trey Smith then had himself appointed for the prosecution of those crimes and arranged a jurisdictionally defective conviction for McInerney by filing a Superior Court Information ("SCI") alleging a crime not charged by felony complaint.

1081. When McDonough exposed the defect to the trial court, Trey Smith initially denied the same but then tacitly admitted it after McInerney's attorney did so.

1082. Specifically, on August 26, 2011, McInerney waived indictment and consented to be prosecuted by SCI for a 2009 AB forgery.

1083. However, the SCI was apparently not filed with the Court at the time of the waiver of indictment as strictly and jurisdictionally required by State Constitution and statutes. See, NYS Constitution Art 1, § 6; CPL 195.40 CPL 195.20, 200.15, 1.20(3-a); *People v. Boston,* 75 NY2d 585 (1990); and McKinney's, CPL 195, Practice Commentaries, Peter Preiser, p.190.

1084. Consequently, under State statutory and case law, McInerney's conviction is effectively a nullity that must be vacated upon motion whenever made.

1085. More importantly, the subject waiver and SCI charged a 2009 forgery for which a felony complaint was never filed and upon which McInerney was not held for Grand Jury action.

1086. Again, therefore, McInerney's conviction is a nullity and subject to being vacated upon motion whenever made. See, N.Y.S. CPL §§ 180.30, 190.55, 195,40 and CPL 200.15.

1087. Nonetheless, Trey Smith never cured that defect even though it provides a basis for McInerney to vacate the conviction upon motion without limitation.

B. *Trey Smith Arranged a Jurisdictionally Defective Conviction for Brown.*

1088. Upon information and belief, Trey Smith also arranged a jurisdictionally defective conviction for Brown by filing a felony complaint alleging a crime which was the subject of a pending Grand Jury proceeding.

1089. Upon information and belief, Brown testified before the Grand Jury that was considering evidence of his AB forgery obtained through the independent NYSP investigation.

1090. Upon information and belief, without an indictment being returned, Trey Smith then filed a SCI and accepted Brown's guilty plea to the charge alleged therein.

1091. Consequently, under State statutory and case law, Brown's conviction is effectively a nullity that must be vacated upon motion whenever made.

1092. Nonetheless, Trey Smith never cured that defect even though it provides a basis for Brown to vacate the conviction upon motion without limitation.

1093. Upon information and belief, the immunity and extraordinarily favorable cooperation agreements, pleas bargains and other dispositions that Trey Smith provided for all the Dem C/0 and others implicated in the AB forgery is evidence of the

conspiratorial scapegoat prosecution and its objectives.

XXXVII. Fabricated False Trial Testimony to Continue Scapegoat Prosecution.

1094. Next, Trey Smith presented the fabricated false testimony of McGrath, Brown, O'Malley, McInerney, Renna, Robillard, Ogden and Dan Brown at trial to continue the scapegoat prosecution of McDonough in furtherance of their extra-judicial conspiracy.

1095. All of the witnesses were interviewed by Trey Smith in his investigatory capacity and their false testimony was fabricated and presented to initiate, continue and cover-up a conspiracy entered into on or about October and/or November 2009 and at all times thereafter, long before any related judicial proceedings were commenced.

1096. The actions, including the silencing and tampering with witnesses and other orchestrations, as well as any later false testimony as needed, were all overt acts that were done and anticipated to be done as the conspiracy evolved, depending initially only on McDonough's actions but later also those of the supervisory NYSP and FBI.

1097. The most plausible inference to be drawn from the record facts is that that once the conspiracy was hatched, those involved were "coached" by Trey Smith as to what false testimony was needed to incriminate McDonough and/or not incriminate their cohorts, exonerate McDonough or expose the conspiracy; i.e. he fabricated the testimony needed, as needed.

A. *DeFiglio's New Fabricated False Testimony was Precluded By Court.*

1098. At trial, to support the prosecution theory, Trey Smith also attempted to offer the additional fabricated false testimony of DeFiglio that McDonough taught him how to trace forge voter signatures from voter registration cards.

1099. In chambers, Trey Smith proffered DeFiglio's new testimony that McDonough had showed him how to place registration cards against his computer to trace voter signature's onto forged AB documents, but then, when McDonough disclosed that he had no computer when the incident was alleged to have happened, Trey Smith proffered DeFiglio's changed testimony that McDonough showed him at that time how to trace the signatures by placing the cards against his office window, until McDonough disclosed that he was not the BOE Commissioner and had no office or workplace window at the time.

1100. The Court then denied Trey Smith's proffer to introduce the new false testimony.

1101. Otherwise, DeFiglio testified as truthfully about facts that exposed the conspiratorial prosecution as he did falsely about facts fabricated to further it.

1102. Upon information and belief, DeFiglio's false testimony was fabricated in material part and given to support of the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

B. *McInerney's Fabricated False Trial Testimony.*

1103. McInerney testified falsely consistent with his prior fabricated statement in the incrimination of McDonough and support of the prosecution theory, as stated above.

1104. Upon information and belief, McInerney's false testimony was fabricated in material part and given to support of the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

C. *O'Malley's Fabricated False Testimony.*

1105. O'Malley gave false trial testimony to continue the conspiratorial scapegoat prosecution of McDonough that was consistent with his false Grand Jury testimony.

1106. O'Malley also gave new false testimony in addition to that he gave before the Grand Jury in the incrimination of McDonough and support of the prosecution theory.

1107. At trial, O'Malley added that on September 14, 2009, he heard McDonough tell McInerney the number of AB votes needed to win the WFP primary and that he had two HVCC students who owed him a favor whose could be counted on to vote by AB.

1108. O'Malley's testimony was fabricated to be consistent with the false testimony of McInerney concerning the forged AB documents of Joseph and Paterson, the two HVCC students from whom the

Dem C/O did not solicit an AAB on September 12, 2009.

1109. In fact, only McInerney knew that he helped those two HVCC students establish residency for reduced tuition and paid them to enroll in the WFP. Neither McDonough nor O'Malley had any contact with either of them.

1110. Therefore, it is clear that Trey Smith fabricated O'Malley's additional false accusation with McInerney's participation: their false trial testimony could not have been consistent unless McInerney told Smith about the HVCC students and O'Malley agreed to lie.

1111. Upon information and belief, O'Malley's false testimony was wholly fabricated and given to support of the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

D. *McGrath's Fabricated False Testimony.*

1112. McGrath gave false trial testimony to continue the conspiratorial scapegoat prosecution of McDonough that was consistent with his false written statement and Grand Jury testimony, as discussed.

1113. Essentially, McGrath testified that he committed no crime, any voter who incriminated him was wrong, any AB document that contradicted his false testimony was wrong and only McDonough committed any crime, as discussed.

1114. Upon information and belief, McGrath's false testimony was wholly fabricated and given to support of the prosecution theory, be consistent with

the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

E. *Brown's Fabricated False Testimony.*

1115. Brown gave false trial testimony to continue the conspiratorial scapegoat prosecution of McDonough that was consistent with his false written statement, as discussed.

1116. Despite having to admit that he forged AB documents, his brother was his campaign manager, he knew completed AAB had to filed to obtain AB and he and/or his brother took all the AAB in question to McInerney to be copied and used to forge signatures on AB envelopes, Brown still failed to exonerate McDonough or admit the entire truth.

1117. Brown denied that he committed the crimes in conspiracy with other Dem C/O, and then admitted it, but only to recant that admission the next day.

1118. Brown did not tell the truth about what happened on September 14, 2009 in McDonough's office concerning the entry of AB Agent names or Excuses on those AAB that would have incriminated McGrath and O'Malley in perjury and exonerated McDonough.

1119. Upon information and belief, Brown's testimony was false in all material respects and fabricated in conspiracy with Trey Smith and/or others to continue the scapegoat prosecution of McDonough and obtain the objectives of their extrajudicial conspiracy, as alleged.

1120. Upon information and belief, Brown's false testimony was fabricated in material part and

given to support of the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

F. *Renna's Past and New Fabricated False Testimony Stricken by Court at Retrial.*

1121. Renna gave false trial testimony to continue the conspiratorial scapegoat prosecution of McDonough that was consistent with his false written statement, as discussed.

1122. At the first trial, Renna also gave the additional fabricated false testimony that McDonough licked the AB envelope of either Testa or Robertson or both.

1123. Renna also falsely testified that McDonough gave him voter registration cards to trace forge the signatures of those voters onto their AB documents, even though the BOE was computerized and had none.

G. *Dan Brown's Fabricated False Testimony.*

1124. Upon information and belief, Renna's false testimony was wholly fabricated and given to support of the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

1125. In any event, when subjected to more exacting cross-examination at the second trial, Renna's testimony was so patently false and fabricated to support the prosecution theory and fabricated false testimony of McGrath, O'Malley, Brown and Robillard that it was stricken in its

entirety and he was directed to leave the courthouse immediately.

1126. Nonetheless, Trey Smith did not prosecute Renna for perjury or rescind his cooperation agreement because of his patently false testimony.

1127. Dan Brown testified that he essentially committed no crimes and did not know anything about any crimes committed by anyone.

1128. However, Dan Brown was his brother's campaign manager, obtained signed AAB from voters on September 12, 2009 that were falsely completed and he was in possession of the AAB that McInerney copied to forge signatures on AB envelopes.

1129. Dan Brown's trial and Grand Jury testimony puts him in possession of AAB and/or AB he gave to McInerney and/ or obtained from him and filed before and/or after they were forged and his contradictory and inconsistent testimony shows that he was involved in the commission of the AB forgery in conspiracy with him and other guilty Dem C/O, especially his brother's admission albeit recanted.

1130. In regard to the thirteen AAB filed on September 12, 2009, McInerney admitted that he had all those AAB in his possession and that one of his co-conspirators filed them with the BOE, but he could not recall which one.

1131. Upon information and belief, the Grand Jury and trial testimony of Dan Brown and others makes it more plausible than not that Dan Brown at least possessed and filed them.

1132. In particular, Dan Brown testified that he obtained AB from McInerney and mailed them to the BOE without knowledge that they were forged.

1133. However, Dan Brown testified in the Grand Jury that he filed certain AAB which McDonough was indicted for forging, before Trey Smith changed his question to make sure he meant AB not AAB as he first said. That relevant testimony is incorporated herein by reference.

1134. Upon information and belief, Dan Brown testified materially falsely and failed to tell the truth about the AB forgery that would have exonerated McDonough.

H. *Ogden's Fabricated False Testimony.*

1135. At trial, Ogden had to admit that his Grand Jury testimony that all the AB Agent names and Excuses on all the AAB were written in the same handwriting and in a pattern that showed they were all written by the same person was wrong.

1136. Ogden admitted that Trey Smith directed and participated in the investigation.

1137. Ogden also admitted that he talked to Robillard about the theory of prosecution and evidence before he rendered his purported objective FDE report.

1138. Most interestingly, Ogden testified that he and Trey Smith believed the self-serving sworn statements of McGrath over those of the voters where their testimony was contradictory concerning whether they wrote or gave him permission to write on their AAB or voted or gave him permission to vote their AB.

1139. Otherwise, Ogden falsely testified consistently with his fabricated false Grand Jury testimony to continue the scapegoat prosecution of McDonough.

I. *Robillard's Fabricated False Testimony.*

1140. At trial, Robillard falsely testified consistent with his report, as stated.

1141. In substance, Robillard gave the fabricated false testimony that his FDE findings indicated that McDonough wrote all the false AB Agent names and Excuses on all the falsified AAB in support of the prosecution theory and the fabricated false Grand Jury and trial testimony of McGrath, O'Malley, Brown and Ogden.

1142. Upon information and belief, Robillard's testimony regarding his purported findings and opinions was no more than fabricated false, improper and subjective testimony given contrary to accepted standards of FDE practice that he was required to follow in order to render objective findings and opinions in a Court.

1143. Upon information and belief, Renna's false testimony was wholly fabricated and given to support the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

1144. Upon information and belief, Robillard's fabricated false testimony was also given to provide Ogden a basis to assert that his Grand Jury testimony was ostensibly reasonable.

1145. Robillard admitted that he came to his findings and rendered his related opinion testimony

without comparing the handwriting of Brown, Dan Brown, McGrath or other suspects.

1146. Later, after the NYSP arrested McInerney and Brown, Robillard obtained and compared handwriting samplers from Brown and Dan Brown.

1147. At that time, Robillard had to admit that the handwriting of Brown, Dan Brown and McDonough was very similar.

1148. Robillard also gave well-rehearsed, improper and false subjective opinion testimony about indentation "evidence" he found from analysis of the falsified AAB.

1149. Robillard also gave testimony about ink analysis performed on AAB.

1150. Robillard also falsely, improperly, callously and maliciously testified numerous times that his handwriting opinions were "overwhelming evidence" that McDonough wrote the false AB Agent names and Excuses on all the AAB, despite the fact that established standards of practice permit only "expressions in degree of confidence" in the "grey area" of opinion and he did not make a single "identification" for any document.

1151. Robillard also testified that his indentation and ink findings were evidence that McDonough wrote the AB Agent names and Excuses on all those AAB.

1152. However, Robillard admitted that Trey Smith directed him to not perform an ink analysis on fourteen (14) specifically identified AAB, including the Dickenson AAB.

1153. Again, McGrath testified before the Grand Jury that he witnessed McDonough write a false Excuse on the Dickenson AAB and heard McDonough talking about names he could write as false AB Agents on all the AAB the Dem C/O obtained in concert.

1154. Based on McGrath's testimony, Trey Smith adopted the prosecution theory that all questioned AAB were forged "behind the counter" by McDonough at his "forgery factory."

1155. Ogden then falsely testified before the Grand Jury, in support of the prosecution theory, that the false AB Agent and Excuses on all the AAB appeared were written in the same handwriting as the Dickenson AAB and showed a pattern that indicated that they were all written by the same person.

1156. However, upon information and belief, the Dickenson and each of the other thirteen (13) AAB that Trey Smith directed Robillard not to perform an ink analysis upon appear to the naked eye to have been written entirely in the same ink.

1157. In view of the record facts, the finding that fourteen (14) AAB were completed in the same ink alone would have exonerated McDonough, disproved the false testimony against him, debunked the prosecution theory and exposed the wrongful prosecution, but it was effectively suppressed by Trey Smith and Robillard.

1158. Therefore, it is obvious that Trey Smith and Robillard did not perform an ink analysis on those fourteen (14) AAB because the findings would have confirmed what was apparent to the naked eye

before McDonough was indicted for entering false data on them: they were completed entirely in the same ink before being filed at the BOE by the Dem C/O.

1159. That forensic evidence also would have: proven that McGrath, McInerney, Brown and others committed the crimes in conspiracy, breached Cooperation Agreements and committed perjury; debunked the purported prosecution theory; and exonerated McDonough.

1160. Upon information and belief, McInerney's false testimony was fabricated in material part and given to support the prosecution theory, be consistent with the false testimony of McGrath, Ogden and O'Malley and falsely convict McDonough, as discussed.

XXXVIII. Trey Smith Sought More Favorable Sentence for Brown, Spoke on Behalf of Renna at Sentencing, Aided Brown in Frivolous Appeal and Dismissed Indictments against Campana and Galuski.

A. *Trey Smith Asked Court to Sentence Brown to Probation.*

1161. At sentencing, Trey Smith asked the court to impose a sentence of probation even though Brown committed perjury before the Court and Grand Jury and Trey Smith and Brown at trial repeatedly told the jury that Brown might be sentenced to prison in order to bolster his credibility and rebut evidence of the scapegoat prosecution.

B. *Trey Smith Spoke in Support of Renna at Sentencing.*

1162. At sentencing, Trey Smith asked the court to sentence Renna to work order in accordance with his cooperation agreement even though he committed such blatant perjury in breach of it that his entire trial testimony was stricken from the record

C. *Trey Smith Dismissed Indictments against Campana and Galuski.*

1163. Upon information and belief, consistent with the conspiratorial scapegoat prosecution and its cover-up, Trey Smith also ostensibly prosecuted Galuski or Campana only to dismiss the pending indictments against them soon after McDonough's trial acquittal.

D. *Trey Smith Did Not Oppose Brown's Frivolous Appeal or Misrepresentations.*

1164. According to a record plea agreement, Brown waived the right to appeal and agreed to be sentenced within the sole discretion of the Court, but upon Trey Smith's recommendation of no more than six months incarceration and five years probation.

1165. At trial, Brown testified he was the only defendant who was going to go to jail or prison and Trey Smith repeatedly made the same representation to bolster his credibility.

1166. However, when the court imposed that sentence, Brown filed a frivolous appeal to have his sentence reduced based purely on misrepresentations of fact and law. Brown's brief on appeal is incorporated herein by reference.

1167. In response, Trey Smith effectively joined in Brown's fraudulent appeal until his conduct

was exposed by McDonough. Smith's respondent's brief and McDonough's amicus brief are incorporated herein by reference.

XXXIX. Additional General Allegations

1168. It is alleged that Trey Smith and Ogden in their investigative capacity intentionally suppressed evidence incriminating those who committed AB forgery, suppressed exculpatory evidence through intimidation, coercion, and other tactics and maliciously prosecuted McDonough without probable cause to deprive him of his constitutional rights.

1169. It is alleged that in his investigatory capacity he made promises and threats to those responsible for the AB forgery he did not prosecute to induce them to agree and conspire to fabricate and give false testimony against McDonough in Grand Jury and trial.

1170. It is also alleged that the defendants conspired to do so and committed overt acts in furtherance of that conspiracy.

XL. Defendants Conspiratorially

1171. It is further alleged, that in doing the acts and things stated above, the defendants were conspirators and, at all times relevant, engaged in a scheme and conspiracy designed and intended to deny and deprive the plaintiff of his rights guaranteed to him under the Constitution and the laws of the Unites States, as alleged herein.

1172. It is alleged that Trey Smith in an investigative capacity entered into an extrajudicial conspiracy with the other defendants to fabricate

false testimony to use it in the Grand Jury and at trial to initiate and continue the wrongfully prosecution of McDonough without probable cause to coerce him into pleading guilty or convict him and deprive him of his liberty and rights to due process and a fair trial

1173. Upon information and belief, Trey Smith, McNally, McGrath, O'Malley, Brown, McInerney, Dan Brown and Renna entered into an extrajudicial conspiracy prior to September 24, 2009 and/or thereafter to scapegoat prosecute McDonough and cover-up their unlawful acts which continued all times thereafter, up to and including, December 21, 2012.

1174. Prior to March 2010 and at various times thereafter, Trey Smith acting in concert and conspiracy with the named individual defendants, acting in an investigative capacity, orchestrated the fabrication of their testimony as needed to initiate and continue the scapegoat prosecution of McDonough, as alleged.

1175. Upon information and belief, on or about a specific date unknown to McDonough after the AB forgery was discovered and prior to September 14, 2009 and/or at various times thereafter, Trey Smith, McGrath, Brown, McInerney, O'Malley, Dan Brown, Renna and Ogden entered into an extra-judicial conspiracy to fabricate false testimony to initiate and continue the malicious and false prosecution of McDonough and convict him for alleged acts they knew he did not commit to protect themselves and others from being prosecuted for the

AB forgery they committed in the subject 2009 WFP primary and/or past elections.

1176. Upon information and belief, on or about a specific date unknown to McDonough, Ogden entered into that extrajudicial conspiracy and committed overt acts in furtherance thereof at all times thereafter, up to and including, December 21, 2012.

1177. Upon information and belief, on or about a specific date unknown to McDonough Robillard entered into that extrajudicial conspiracy and committed overt acts in furtherance thereof at all times thereafter, up to and including, December 21, 2012.

1178. Upon information and belief, McGrath, O'Malley, Brown, McInerney, Dan Brown, Renna, Ogden and Robillard intentionally and maliciously gave that false testimony acting in conspiracy with Trey Smith and/or others to initiate, continue and cover-up the unlawful, scapegoat prosecution of McDonough.

1179. The false testimony and other alleged acts of the defendants to initiate, continue and cover-up the scapegoat prosecution of McDonough, from on or about October 2009 until December 21, 2013 were overt acts in furtherance of that conspiracy.

1180. On or about September 24 to September 28, 2009, and thereafter until December 21, 2012, McNally and the County allowed Trey Smith to continue the wrongful prosecution of McDonough by opposing his disqualification or failing to commence an action to have his illegal appointment nullified in

accordance with the established law of which he was given notice.

1181. The failure of McNally and County officials to take action to disqualify Trey Smith despite notice and knowledge of its unlawfulness caused McDonough to suffer a wrongful prosecution that resulted in two protracted trials, great monetary expense and substantial personal injury.

XLI. County Policymaking Decisions and Actions

1182. At all times relevant, Trey Smith acted as an agent, employee and/or officer of the County and in his purported capacity as Special District Attorney for the County. In addition, he acted as a policy maker in his actions investigative, administrative and extra-judicial actions as Special District Attorney.

1183. At all times relevant, McNally acted as an agent, employee and/or officer of the County and in his capacity as District Attorney and while acting within the course of his employment and in his official capacity. In addition, he acted as a policy maker in his administrative and extra-judicial actions as District Attorney.

1184. At all times relevant, despite having knowledge of the *ultra vires* actions of McNally and Trey Smith to fabricate and use false testimony to initiate and continue his unlawful malicious prosecution without probable cause and deprive him of his liberty and property rights as alleged, the county and its officials took no action to prevent or stop their conduct, but instead have condoned,

supported and ratified the continued violation of his rights as alleged herein.

1185. At all times relevant, the defendant policy-making officials McNally and Trey Smith affirmatively acted to fabricate and use false testimony to initiate and continue his unlawful malicious prosecution without probable cause and deprive him of his liberty, property and other rights, as alleged.

1186. Therefore, at all times relevant, by their conspiratorial conduct and failure to take action to prevent the continued unlawful prosecution of the plaintiff in violation of his rights and well established law, the defendant policymaking and supervisory city officials have established a municipal policy of unlawfully initiating and continuing the unlawful malicious prosecution of McDonough in violation of his well established constitutional rights, as alleged.

1187. All of the alleged acts of Trey Smith, although *ultra vires* and beyond the scope of law, were done under the color of his purported appointed office and constitute unlawful and unjustifiable policy acts and decisions of the respondent County.

1188. The act of McNally unlawfully disqualifying himself and his staff from the patently broad-scoped investigation and prosecution of the subject matter and have Trey Smith appointed Special District Attorney was a policy act and decision of the defendant County that was made to allow and/or did allow Trey Smith to, among other *ultra vires* acts, commence and continue a wrongful

prosecution against McDonough based on fabricated testimony.

1189. The acts of McNally and all of the acts of Trey Smith thereafter were *ultra vires* and beyond the scope of the law but within the scope of their employment.

1190. On or about September 24 to September 28, 2009, and at all times thereafter up until December 21, 2112, McNally and the County failed to take proper and necessary action to prevent Trey Smith from taking any further unlawful action pursuant to his illegal appointment by bringing a civil actions to have his appointment declared null and void in accordance with the mandates of well-established law of which they were aware and provided timely notice.

1191. The failure and willful refusal of McNally and the County to take proper and timely action to prevent the acts of Trey Smith from initiating and/or continuing a prosecution of McDonough based on fabricated false testimony constituted an unlawful policy decision that caused McDonough to suffer a wrongful prosecution which resulted in two protracted trials, all at great monetary expense and substantial personal, mental and emotion injury.

1192. McNally effectively initiated the wrongful prosecution of McDonough by unlawfully disqualifying his office from the matter and obtaining an *ultra vires* Court order appointing Trey Smith as Special District Attorney and thereafter continued it by opposing and failing to take action to have him disqualified and the indictment dismissed

despite notice and knowledge of its unlawfulness and that Trey Smith was acting illegally and in excess of the law.

1193. McNally's actions in effectively suppressing the disclosure of evidence material to McDonough's defense was a wrongful and unjustifiable policy act and decision made to, and/or did, further the wrongful and malicious prosecution of McDonough, as stated.

1194. Trey Smith's actions in initiating and continuing the unlawful prosecution of McDonough with notice and knowledge of its unlawfulness and that he acting outside the scope of the law constituted an unlawful policy decision that caused McDonough to suffer a wrongful prosecution which resulted in two protracted trials, all at great monetary expense and substantial personal, mental and emotion injury.

1195. In addition, the County Legislature and County Executive had notice and knowledge of the alleged *ultra vires* and unlawful acts of McNally and Trey Smith. Therefore, its acts in failing to take timely and appropriate action to have Trey Smith's Court Order of appointment declared null and void, despite having notice and knowledge that Trey Smith was acting illegally and in excess of the law, constituted a policy or policymaking decision or policy act that was adopted and ratified by the County through its legislative and/or executive body.

XLII. Violations and Claims Alleged

1196. Plaintiff has been subjected, by the above recited acts, to the deprivation by the defendant, under color of law and of the customs of

the State of New York, of the rights, privileges and immunities secured to him by the Constitution and the laws of the Unites States as stated herein.

1197. As a direct and proximate result of the defendants' concerted actions, under color of law, McDonough has suffered the deprivation of his civil and constitutional rights; serious physical, mental and emotional injuries, pain and suffering, including physical illness, extreme mental and emotional distress, depression and anxiety, loss of self-esteem, and feelings of helplessness and worthlessness; humiliation, embarrassment, ridicule, indignity and social and personal stigmatization; invasion of privacy; actual and *presumed damages* to his good professional name and reputation in the social community; medical expenses, investigation costs, substantial attorney fees and other monetary damages in defending against the defendants' malicious relentless unconstitutional conduct and in pursuing the claims herein.

XLIII. Plaintiff's Injuries

1198. As a direct consequence and result of the acts of the defendants alleged herein, plaintiff was deprived of his liberty, caused great expense and restrained in his travel and been irreparably injured and damaged.

1199. On January 28, 2011, McDonough was arrested by the New York State Police, processed on the sealed indictment before arraignment, taken into the custody, and arraigned before the Rensselaer County Supreme Court. At that time, the Court ordered that he remain within the jurisdiction of the Court and surrender any passport.

1200. McDonough then suffered two trials upon said charges before the Rensselaer Court Supreme Court in the City of Troy, upon which he was acquitted on December 21, 2012.

1201. Upon information and belief, no reasonable view of the facts and circumstances could have supported the criminal charges against McDonough or his prosecution based thereon.

1202. McDonough was innocent of the charges on which he was wrongfully indicted and unlawfully, maliciously prosecuted.

1203. Plaintiff suffered greatly from January 27, 2010, and at all times thereafter, including sixteen (16) weeks of two protracted trials that ended on December 21, 2012 with his exoneration on all (74) felony charges.

1204. McDonough also suffered emotional distress due to being subjected to the criminal process and the deprivation of his rights as stated herein and his injuries were caused solely by the intentional, wrongful and illegal actions of Rensselaer County policymaking officials Trey Smith and McNally, who while acting in the course and scope of their duties, and in conceit and conspiracy with the other respondents, without proper investigation and determination of the facts, caused McDonough to be wrongfully and falsely accused, indicted, arrested and maliciously prosecuted.

1205. Due to the conduct of the defendants, McDonough has and likely will suffer public disgrace, ridicule, contempt and reproach; castigation from law enforcement officials; injury to his character and good reputation; great mental

anguish and pain, and irreparable injury in his profession, all to his monetary damage.

1206. Plaintiff also sustained exorbitant criminal defense attorney fees and costs.

1207. The monetary damages and injuries suffered by claimant were caused solely and directly by the malicious actions of Trey Smith while acting in the course of his employment as Special District Attorney of Rensselaer County to obtain the objectives of an extrajudicial conspiracy with the other named individual defendants to scapegoat prosecute the plaintiff for acts he did not do that do not constitute the forgery crimes charged as a matter of law.

1208. Plaintiff has also suffered the loss of income as a result of his wife effectively being compelled to resign to avoid wrongfully termination from employment due to the adverse publicity of the matter and the same has also caused his substantial economic hardship. He has also suffered continued emotional distress and public humiliation.

COUNT I

SIXTH AMENDMENT RIGHT TO A FAIR TRIAL

FIFTH AMENDMENT DUE PROCESS

FOURTEENTH AMENDMENT DUE PROCESS

Constitutional Right Not to be Deprived of Liberty as a Result of Fabrication of Evidence

(CIVIL RIGHTS CLAIM UNDER 42 U.S.C. SECTION 1983)

Zahrey v. Coffey, 221 F3d 342, 344 (2d Circ., 2000); Ricciutti v. NYC Transit Authority, 124 F. 3d 123 (2d Circ., 1997).

1209. Plaintiff incorporates by reference and re-alleges all of the allegations contained in paragraphs 1 through 1120 as if set forth fully herein.

1210. In committing the acts complained of herein, the defendants acted, individually and/or conspiratorially, under color of state law to deprive the plaintiff of certain constitutionally protected rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, including, but not limited to: (a) the right to be free from unreasonable searches and seizures; (b) the right not to be deprived of liberty without due process of law; (c) the right not to due process of law, both procedural and substantive; (d) the right to be free from malicious arrest and/or prosecution without probable cause; and (e) the right to a fair trial.

1211. Specifically, the plaintiff has Constitutional right not to be deprived of his liberty, liberty interests or a fair trial as a result of the fabrication of false evidence by a government officer acting in an investigatory capacity especially where that officer foresees that he himself will use the evidence with a resulting deprivation of liberty.

1212. The defendants deprived plaintiff of those rights in violation of the Fifth, Sixth and/or Fourteenth Amendments to the United States Constitution and Title 42 USCS § 1983, as alleged herein.

1213. This claim arises directly under both Title 42 USCS § 1983 and under the United States Constitution.

COUNT II

FOURTH AMENDMENT

FOURTEENTH AMENDMENT DUE PROCESS CLAIM

Constitutional Right Not to be Prosecuted Maliciously without Probable Cause

(CIVIL RIGHTS CLAIM UNDER 42 U.S.C. SECTION 1983)

Singer v. Fulton County Sheriff, 63 F3d. 110 (2d Circ., 1995)

1214. Plaintiff incorporates by reference and re-alleges all of the allegations contained in paragraphs 1 through 1120 as if set forth fully herein.

1215. In committing the acts complained of herein, the defendants acted, individually and/or conspiratorially, under color of state law to deprive the plaintiff of certain constitutionally protected rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, including, but not limited to: (a) the right to be free from unreasonable searches and seizures; (b) the right not to be deprived of liberty without due process of law; (c) the right not to due process of law, both procedural and substantive; and (d) the right to be free from malicious arrest and/ or prosecution without probable cause.

1216. Specifically, the plaintiff has Constitutional right not to be arrested, detained,

restricted in liberty and/or prosecuted without probable cause, including when deprived of his liberty, liberty interests or a fair trial as a result of the fabrication of false evidence by a government officer acting in an investigatory capacity especially where that officer foresees that he himself will use the evidence with a resulting deprivation of liberty.

1217. The defendants deprived plaintiff of those rights in violation of the Fifth, Sixth and/or Fourteenth Amendments to the United States Constitution and Title 42 USCS § 1983, as alleged herein.

1218. This claim arises directly under both Title 42 USCS § 1983 and under the United States Constitution.

COUNT III

Monell Claim Against County

(CIVIL RIGHTS CLAIM UNDER 42 U.S.C. SECTION 1983)

1219. Plaintiff incorporates by reference and re-alleges all of the allegations contained in all of the paragraphs above as if set forth fully herein.

1220. Defendant County violated the plaintiff's rights and caused him said deprivations through its policymaking acts decisions, as alleged herein.

DEMAND FOR PUNITIVE DAMAGES

Upon information and belief, at all times relevant, the individual defendants acted with malice, intent to injure, or deliberate, reckless or callous indifference to McDonough's well established rights under the Fourth, Sixth and Fourteenth

Amendments of the United States Constitution which provides a basis for the imposition of punitive damages.

The actions of the individual defendants as described herein were extreme and outrageous, and shock the conscience of a reasonable person. Consequently, an award of punitive damages is appropriate to punish the defendants for their cruel and uncivilized conduct.

DEMAND FOR TRIAL BY JURY

The plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays for the following relief:

1. Judgment against the defendants individually, jointly and severally for compensatory damages in the amount of six million ($6,000,000.00) dollars for the actual damages plaintiff has and will suffer; and

2. Judgment against the defendants individually, jointly and severally for punitive damages in the amount of two million ($2,000,000.00) dollars or in such other amount as is commensurate with the wrong and with the defendants' ability to pay; and

3. Order the defendants individually, jointly and severally to make plaintiff whole with respect to pay his full damages proximately resulting from defendants' wrongful actions, including medical and related expenses, travel, copying and postage costs; and

4. Award Reasonable attorney's fees, costs pursuant to 42 USCS § 1988; and

5. Award such other and further relief as the Court deems just and proper; and

If the Court should find for plaintiff, on any or all counts, plaintiff respectfully requests that a separate hearing be held for the production of evidence on the amount of damages.

Dated: December 18, 2015.

s / Brian D. Premo, Esq.

BRIAN D. PREMO, ESQ.
Fed Bar No. 102394
PREMO LAW FIRM PLLC
Attorneys for Plaintiff
20 Corporate Woods Boulevard
Albany, New York 12211
(518) 436-8000

TREY SMITH, ESQ.
SPECIAL DISTRICT ATTORNEY
Smith Hernandez LLC
Rensselaer Technology Park
105 Jordan Road
Troy, New York 12180-8376
Telephone: (518) 283-4100
Facsimile: (518) 283-7649

April 27, 2011

VIA FACSIMILE (518) 431-0249

William C. Pericak, Esq.
Assistant U.S. Attorney
United States Attorney
Northern District of New York
445 Broadway, Room 218
James T. Foley U.S. Courthouse
Albany, New York 12207-2924

Re: In the Matter of an Investigation Pertaining to Rensselaer County Supreme Court Index No. 230629, Christian Lambertsen v. Lawrence Bugbee, et al.

Dear Bill:

As you must know, I am the Special District Attorney in the above matter, which concerns ballot fraud in the September 15, 2009 primary held in the City of Troy. Yesterday I received a telephone call from Brendan Lyons of the Times Union regarding

an investigation allegedly being conducted by the F.B.I. of the same matter. I assume you were not the source for the story, which appeared in this morning's edition of the Times Union.

You may not know that shortly after my assignment to this case, and after my initial review of the file, I spoke with Acting U.S. Attorney Andrew Baxter and F.B.I. Agent Laura Youngblood regarding the case. I realized then that proper investigation would require substantial resources. Long story short, I was told that given that I was already assigned and that the September 15, 2009 primary was not a federal election, the Government would decline any role, even after I made it clear that I would step aside if the Government would take over the investigation and any prosecution. The New York State Police then agreed to assist, and has expended considerable resources in the investigation, which lead to the indictment of Edward McDonough and Michael LoPorto. The People do not intend the prosecution to end with the indictment of Mr. McDonough and Mr. LoPorto. The State Police and I continue to work the case.

Some may read your refusal "to confirm or deny" that the F.B.I. was investigating the September 15, 2009 primary as discrediting our work. I assume this was not your intent. I called this morning and left messages for you and Rick Hartunian. I would greatly appreciate a return of my calls today so that we can address these issues promptly and avoid any misunderstanding.

Very truly yours,

/s/ Trey Smith
Trey Smith
Special District Attorney

TS/mw
cc.: Capt. Steven James *(via e-mail)*

TREY SMITH, ESQ.
SPECIAL DISTRICT ATTORNEY
Smith Hernandez LLC
Rensselaer Technology Park
105 Jordan Road
Troy, New York 12180-8376
Telephone: (518) 283-4100
Facsimile: (518) 283-7649

April 28, 2011

VIA FACSIMILE (518) 431-7463

Special Agent in Charge Clifford C. Holly
The Federal Bureau of Investigation
200 McCarty Avenue
Albany, New York 12209

Re: In the Matter of an Investigation Pertaining to Rensselaer County Supreme Court Index No. 230629, Christian Lambertsen v. Lawrence Bugbee, et al.

Dear Special Agent in Charge Holly:

I am the Special District Attorney in the above matter, which concerns ballot fraud in the September 15, 2009 primary held in the City of Troy. Two days ago I received a telephone call from Brendan Lyons of the Times Union regarding an investigation allegedly being conducted by the Albany office of the F.B.I. of the same matter.

Shortly after my assignment to this case in late September, 2009, and after my initial review of the file, I spoke with Acting U.S. Attorney Andrew Baxter and F.B.I. Agent Laura Youngblood regarding the case. I realized then that proper investigation would require substantial resources. Long story short, I was told that given that I was already assigned and that the September 15, 2009 primary was not a federal election, the Government would decline any role, even after I made it clear that I would step aside if the Government would take over the investigation and any prosecution. The New York State Police then agreed to assist, and has expended considerable resources in the investigation, which lead to the indictment of Edward McDonough and Michael LoPorto. The People do not intend the prosecution to end with the indictment of Mr. McDonough and Mr. LoPorto. The State Police and I continue to work the case.

Yesterday I called and left a message at your office for someone to return my call. I did not leave the message for you specifically, because I did not know yet what I was dealing with. Later that same day I spoke with Assistant U.S. Attorney William C. Pericak, whom I have known for a number of years. Mr. Pericak's reputation for candor and forthrightness is impeccable. Mr. Pericak told me that the first he had heard of an investigation by the F.B.I. of this matter was two evenings ago, when he received a call for comment from Mr. Lyons. Mr. Pericak also confirmed for me, again, that the Government had no jurisdiction to investigate this matter. I assumed that what had occurred was that Brian Premo, the attorney for Mr. McDonough, had

gotten an interview with an F.B.I. Agent, that this Agent had told Mr. Premo that he would "look into" his claims (which include alleged prosecutorial misconduct and selective prosecution, claims which are categorically denied), and that there was nothing more to this story, and I so advised Capt. Steven James of Troop G, Loudonville.

A few hours after my conversation with Mr. Pericak, I received a telephone call from local investigative television journalist John McLaughlin, who asked me to respond to his information, which he allegedly had confirmed with several defense attorneys, that a local F.B.I. Agent was, in fact, contacting those attorneys to seek permission to speak with witnesses in the case. One of those witnesses allegedly is Robert Martiniano, with whom the State Police and I have been trying to arrange an interview for weeks. The name given to me of the agent scheduling interviews is an Agent McDonald. This morning's Troy Record indicates that the agent also has "sat down" with Mr. Premo.

I trust I do not need to spell out for you the many issues arising from this situation, which has already gone public. These issues are pressing, and need to be resolved immediately. I would greatly appreciate the courtesy of a phone call today.

Very truly yours,

/s/ Trey Smith
Trey Smith
Special District Attorney

TS/mw
cc.: Capt. Steven James *(via e-mail)*
William C. Pericak, Esq. *(via facsimile)*

AFFIDAVIT
CPL 190.30(3)(f)

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss:

Jolene VanVranken, being duly sworn, deposes and states:

1. My name is Jolene VanVranken.

2. I make this affidavit pursuant to New York Criminal Procedure Law § 190.30(3)(f), which provides that a written statement under oath may be received in a grand jury proceeding as evidence of a person's identity as an ostensible maker, drafter, drawer, endorser or other signator of a written instrument and its falsity within the meaning of New York Penal Law § 170.00.

3. This affidavit is made on personal knowledge, and on information and belief where indicated.

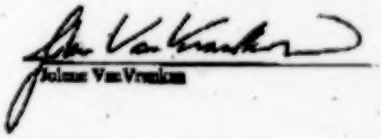
4. On information and belief, as of September 15, 2009, I was enrolled in the Working Families Party and registered to vote in the City of Troy, County of Rensselaer and State of New York. However, the registration was not current. In June, 2010, I moved from the City of Troy to _____ in Rensselaer County, New York.

5. Attached as Exhibits "A" and "B" are copies of an absentee ballot application and absentee ballot envelope which I understand were filed with the Rensselaer County Board of Elections in connection with the September 15, 2009 primary held for voters of the City of Troy. Both documents purport to be an

authentic creation of mine, that is, both purport to have been made or completed by me.

6. The absentee ballot application attached as Exhibit "A" contains entries which I did not make or authorize. I did not sign the application, and I did not authorize anyone to sign the application on my behalf. I was not the source of the information in the "Where will you be on Election Day" section of the application, and the information in that section of the application is false. I did not make the entry in that section of the application, and I did not authorize anyone to make that entry on my behalf. I was not the source of the information in the "Delivery of PRIMARY election ballot" section on the application. I did not make the entry in that section of the application, and I did not authorize anyone to make that entry on my behalf.

7. The absentee ballot envelope attached as Exhibit "B" contains entries which I did not make or authorize. I did not sign the ballot envelope, and I did not authorize anyone to sign the ballot envelope on my behalf. I did not date the ballot envelope, and I did not authorize anyone to date the ballot envelope on my behalf.



Subscribed and sworn to before me
this 8th day of December, 2010.

/s/ Youel C. Smith, III
NOTARY PUBLIC
(seal)

Q. All right. I'm going to show you that. (Affidavit marked Defendant McDonough's Exhibit DD for identification.)

Q. Take a look at the second page of that document, DD, I believe. Is that your signature?

A. No.

Q. And there's no middle initial in that; is there?

A. Eh-eh.

Q. Could you tell us what that document is?

A. I'm sorry?

Q. What does the document say it is?

A. It says it's a deposition.

Q. A forgery deposition for the Grand Jury. Is that what that is? Have you ever seen that document before today, ma'am?

A. I don't remember.

Q. Well, it's not your signature on it; correct?

A. No.

Q. Could you take a look at that signature that's on Page 2 of that document and compare it to the signature on the New York State Police deposition that you gave and signed?

A. Okay.

Q. Which signature appears to be yours?

A. The left one.

Q. And you have been writing that for a long time; right?

A. Yes.

Q. And it's pretty loopy?

A. Yes.

Q. And you signed it with your middle initial?

A. Yes.

Q. And, yet, that forgery affidavit is in completely different handwriting; isn't it?

A. This one?

Q. Yes.

A. Yes.

Q. And who is the Notary on that document?

MR. SMITH: Your Honor --

A. I can't read it.

MR. SMITH: Your Honor, can we approach?

THE COURT: The answer is I can't read it.

MR. PREMO: I would like to offer all of the documents in evidence, Your Honor, for signature purposes, and for further purposes outside the presence of the jury.

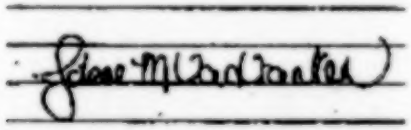
MR. HUG: Your Honor, there's no relevance to this at all.

MR. PREMO: Oh, it has every relevance.

THE COURT: Please, please, please; no editorial comments.

MR. HUG: Your Honor, the testimony was that

* * *



[Defendant's Exhibit __: signature exemplar]

UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date: 04/03/2011

To: Albany Attn: Squad 4

From: Albany
Squad 4
Contact: SA

Approved By:

Drafted By:

Case ID #: 194B-AL-49174 (Pending)

Title:

CRIM-LL;
SENSITIVE INVESTIGATIVE MATTER

Synopsis: To report meeting with USAO, NYSP and Special D.A. Trey Smith.

Details: On Thursday, 4/2/2011, from around 1:00 to 4:00, ASAC and SA met with ASAGs New York State Police (NYSP) Investigators and Rensselaer County Special District Attorney Trey Smith to discuss coordination of investigative activity by the FBI and the NYSP.

Smith stated he required an explanation from the FBI and the USAO as to the reasons requested an interview to Smith further it would be impossible for him or the NYSP to work with the FBI or the USAO until he could overcome the "trust issues" he had regarding the FBI. Smith cited one reason he had trust issues was the fact that the local news radio directed to respond to 's request. that, based upon a request from directed to interview

UNCLASSIFIED

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b7C

194B-AL-49174

UNCLASSIFIED

To: Albany From: Albany
Re: 1948-AL-49174, 06/03/2011

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[redacted] stated he explained to [redacted] that the FBI did not normally investigate fraud relating to non-federal elections. [redacted] stated that, based upon [redacted] finding evidence of fraud relating to a Federal election and an apparent ongoing, organized effort to commit voter fraud in [redacted] County, he interviewed other people, including [redacted] whom the NYSP had already interviewed. [redacted] explained he interviewed [redacted] to obtain information about ongoing and historical criminal activity which was beyond the scope of Smith's authority as Special D.A. and which was not included in the statements taken by the NYSP. Smith stated he would take [redacted] at his word but that he still had trust issues to overcome. [redacted] asked Smith to explain his concerns about "trust issues," but Smith did not explain what those trust issues were.

Smith stated [redacted]

[redacted] Smith stated he witnessed [redacted]

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[redacted] Smith stated [redacted]

[redacted] stated he believed [redacted]

[redacted] Smith stated [redacted]

he believed [redacted]

but Smith did not elaborate. Smith stated [redacted] had been interviewed twice by the NYSP and once by himself and Inv. [redacted]

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UNCLASSIFIED

To: Albany From: Albany
Re: 194B-AL-49174, 06/03/2011

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Smith explained his authority as Special D.A. was narrowly defined under New York County Law section 701, and he did not have authority to investigate matters not directly relating to the September 2009 NYS primary election as described in the lawsuit *Lambertson v. Pagnoo, et al.* Smith had not applied for an expansion of his authority and was not inclined to do so because he was concerned election fraud was so widespread in Rensselaer County that there might be no end to the investigation if he expanded it. Smith was also concerned about the cost the county would incur for such an investigation. As such, Smith believed the only use he could make of evidence or testimony relating to the 2007 or 2008 elections would be Molineux evidence (Federal Rule of Evidence 404b), meaning it might be used as evidence of prior uncharged criminal acts. Smith then said he was considering requesting an expansion of his authority and could not rule it out. Smith did not explain what would cause him to request an expansion.

Smith stated he and the NYSP believed they had enough evidence to warrant prosecution of [redacted] and Inv. [redacted] stated the NYSP investigation would be completed by Friday, 6/10/2011.

Smith said several times that he "welcomed" the involvement of the FBI, and that the FBI's assistance could help the investigation and save Rensselaer County additional expense. Smith added that he "was just one man", that the NYSP had done tremendous work on the investigation, and without the NYSP the defendants in the case likely would have been offered pleas to violation level offenses months ago.

[redacted] advised Smith that the attorneys [redacted] had asked for the opportunity to have their clients full statements to the FBI. [redacted] advised Smith the attorneys for [redacted] said they wanted to give statements to the FBI because they did not trust Smith. [redacted] asked whether anyone had a reason why the FBI should not take statements from them. Sr. Inv. [redacted] stated the NYSP were concerned the DRPO would offer plea deals to witnesses or subjects who gave incriminating statements to the FBI, and that it could negatively affect the NYSP investigation. [redacted]

[redacted]

UNCLASSIFIED

NEW YORK STATE POLICE

VOLUNTARY STATEMENT

COUNTY OF RENSSELAER

STATEMENT START TIME: 8:40 [X] AM [ ] PM

TOWN OF BRUNSWICK

DATED: SEPTEMBER 16, 2011

I, William A. McInerney AGE: 47 AND BORN ON: / /1963, AND RESIDING AT: 2423 21ST ST. APT. #5 TROY, NY, HAVE BEEN ADVISED BY: Inv. John. J. Ogden Jr., OF THE NEW YORK STATE POLICE, OF THE FOLLOWING:

I HAVE THE RIGHT TO REMAIN SILENT AND I DO NOT HAVE TO MAKE ANY STATEMENT IF I DO NOT WANT TO.

IF I GIVE UP THAT RIGHT, ANYTHING I DO SAY CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW.

HAVE THE RIGHT TO HAVE A LAWYER PRESENT BEFORE MAKING ANY STATEMENT OR AT ANY TIME DURING THIS STATEMENT.

IF I SHOULD DECIDE THAT I DO WANT A LAWYER AND CANNOT AFFORD TO HIRE ONE, A LAWYER WILL BE APPOINTED FOR ME FREE OF CHARGE AND I MAY HAVE THAT LAWYER PRESENT BEFORE MAKING ANY STATEMENT.

I ALSO UNDERSTAND THAT I HAVE THE RIGHT TO STOP AT ANY TIME DURING THIS STATEMENT AND REMAIN SILENT AND HAVE A LAWYER PRESENT.

I FULLY UNDERSTAND THESE RIGHTS AND AT THIS TIME, I AGREE TO GIVE UP MY RIGHTS AND MAKE THE FOLLOWING STATEMENT;

/s/ James E. Long	/s/ William McInerney
WITNESS	WILLIAM A. MCINERNEY

I am at the State Police Station in Brunswick, NY. I am here with Gregg Amiroso. Mr. Amiroso is an attorney and associate of my Attorney James Long. Mr. Long has asked Mr. Amiroso to accompany me to this interview, and I acknowledge that he is my legal counsel for the purpose of this interview. I know that Inv.'s Ogden and Fancher have been assigned to investigate the Absentee Voter Ballot Fraud which took place in September of 2009 and affected the Primary election in the City of Troy for the Working Families' Party. I am here to provide any and all information I have pertaining to my conduct and information I possess as to the conduct of other persons who were involved in the procurement and subsequent forgery of Absentee Ballot Applications and the Ballots generated from those ballot applications.

I began my career in politics in the mid nineteen eighties. I received a patronage job in the State Legislature. Edward McDonough Sr. was my Benefactor in receiving this position. My first job was in the Bill Drafting Dept. I moved to the Assembly in various departments. I worked there until 2007. When I received the position I knew my job was contingent upon my service to the Democratic Party.

I had been a volunteer for some time prior to Mr. McDonough helping me to get the job. In 1996 or 1997 I became a committeeman in the City of Troy. In my capacity as a committeeman my responsibilities to the Democratic Party increased. I was now responsible for obtaining signatures on Petitions and for any other tasks required to promote a candidate. I posted Political signs, did mailings, organized fund raisers, and any other function to assist the Party and our candidate's campaigns.

I lost my job in the Legislature in 2007, I needed another job. I thought that if I worked hard and made a significant contribution to the party during the 2007 election cycle I may be able to put myself in a position to ask for a new job in the Democratic Party. I knew from my previous experiences in politics that there were several ways that an election could be influenced. The residents of the City's Low income public housing were also targeted in the party registration process. If a voter was registered in a Political Party, their vote was available to forge in future primary and general elections. I also learned that Absentee Ballots were a way to influence the outcome of an election. By targeting voters who didn't regularly vote, or who had moved away, or were just ignorant to the absentee voting process, an absentee ballot could be cast in their name and it would not be discovered because no one would ask any questions as to the authenticity of the ballot. There were several methods employed to complete this type of manipulation. An actual signature could be procured from the voter with the promise that the vote itself would be taken care of. Another method would be to solicit the absentee

Ballot Application, and if the voter wasn't home, or didn't answer the door, then the name would just be forged. Once I had a list of voters registered in the Democratic Party, I could go out in my district and solicit absentee Ballot Applications in order to generate an actual Absentee Ballot. Once I had the Absentee Ballot I could vote the Party Line on every one and have an influence on the outcome of a given election. When ever I would go to the Beard of Elections to obtain Absentee Ballot applications or to turn in Absentee Ballots I would deal specifically with Ed McDonough Jr., The Democratic Commissioner, or Mary Sweeney his Senior Clerk. I dealt with Ed and Mary for the specific reason that I knew that they would never ask me a question about it. I would ask for many absentee Ballot applications at a time just prior to the election. I wouldn't turn in the absentee Ballots until the day of the election. This is a strategy on both sides of the aisle to prevent the other party from knowing how many absentee ballots are being cast. Whenever I obtained a legitimate ballot, I mailed it in. From my experience, my success rate in procuring Absentee Ballots was far and away above the average of other workers. During the 2007 and 2008 election cycles my success at procuring absentee ballots became common knowledge. Everyone knew that for just about every absentee ballot application that I received, a completed absentee ballot would be received at the board of Elections. I never actually told anyone what I was doing, and no body ever asked me how I was so successful.

In January of 2008 I was rewarded for all of my "hard work." I was appointed to the position of Troy

City Clerk by the Troy City Council. The Democratic Party took control of the City council. Clement Campana was elected as the president of the City Council. Clem nominated me for the position. My efforts at obtaining absentee ballots continued during the 2008 election cycle. I forged absentee ballot applications and I also forged the ballots corresponding to many of those applications. During the 2007 and 2008 election cycles I acted alone in forging ballots and applications. I am convinced that people knew what I was doing, but I did act alone.

In the summer of 2009 several of the City Council candidates expressed concern that the Mayor of Troy, Harry Tutunjian, would cause a large Republican turn out and that some of the lesser known candidates in the Republican party would "ride his coat tails" because he had won by a landslide over the Democratic candidate, Jim Conroy, in the 2007 election. After the first week in July, when Petitions were submitted, there were rumblings within the Democratic Party that we need to control the Working Families Party Line in order for our candidates to keep their seats on the City council. During the third week of August 2009 following a City council committee meeting I was approached by John Brown. John Brown is a City councilman and it is well known that he is very ambitious and wants to be Mayor after Tutunjian's term is over. Brown came up to me following the meeting, outside of the City Hall. I was on my way to my car. Brown told me that he wanted the working Families line. Brown knew that whomever was the City Council President had the inside line at receiving the Party's endorsement to run for Mayor

in the next election, which would be an open seat after Tutunjian's term expired. John Brown, Clement Campana and Michael LoPorto are the Democratic "At large" Candidates on the City council. All three were in agreement that they needed the WFP Line, but all three also wanted to receive the most votes in the "at large" race for City Council. So they were allies and competitors at the same time. All three had Party interests and personal interests working against each other. When I left the City council committee meeting I went to Michael LoPorto's restaurant on 4th St. in Troy. Present at the restaurant were: Michael LoPorto, Clement Campana, Robert Martiniano, Thomas Aldrich, Anthony DeFiglio, Kevin McGrath and me. During the meeting the control of the WFP line was discussed. Michael LoPorto and Clement Campana both spoke to me personally and told me there wishes to control the WFP line. It was clear to me that Brown, Campana and LoPorto all were speaking to me personally because they were aware of my record at procuring absentee Ballots. Kevin McGrath also commented that he would like to control the WFP in his Council District. He stated that he thought there were about thirty WFP votes in his District. Anthony DeFiglio had a list of the registered voters in the WFP. He noted that most of the voters were residents of the City of Troy Public Housing. Anthony advised that procuring those votes wouldn't be a problem. Anthony was a clerk at the City's housing authority, and most of the voters know him and will open their doors for him. I argued against this strategy because knew that I really didn't know most of the officers in the WFP, and I

didn't trust them. I also knew that, even though Harry Tutunjian had won the Mayor's race in 2007, the Democratic candidates had won the City council. I knew that there must have been some previous discussion about winning the WFP line. That was the only explanation for Anthony DeFiglio to have the WFP voter registration list. I didn't want to be involved in the whole idea but I knew that LoPorto, Campana and Brown didn't trust each other and they obviously all were looking to me to insure the outcome. Michael LoPorto said to me; something to the effect of "Lets get the working families Party line, Lets get it done". I knew that I would be taking a chance helping these guys. I was hoping that LoPorto, Campana and Brown would take care of the ballots; but I knew it was going to be a problem. There were several reasons for my concerns. First was that Brown, LoPorto and Campana didn't trust each other. Secondly, I didn't know, or trust, any of the WFP people. And third, there were just too many people involved and I knew something would go wrong, but didn't see myself as having a choice. My job was dependent on those three controlling the WFP line. I was in a no win. If they won and didn't control the line then they would know that I didn't do what was asked and I believed I would probably lose my job, and if they lost, I was out anyway. There was some discussion about the absentee ballot applications and who they would be released to. Michael LoPorto said that Thomas Aldrich would help us. When I obtained a Ballot application I often put "Thomas Aldrich" as the name in the "release to" section of the application.

I made contact with Ed McDonough Jr. I asked him how many votes it would take to insure that our candidates controlled the WFP line. McDonough told me that it would take 125 votes, total in person and absentee, to control the line. During the meeting at LoPorto's, The candidates had a discussion and someone said that we needed 25 votes in each of the six voter districts. I said that there was no possible way that we we're going to get that many votes. It was abundantly clear to me what was expected of me from the three candidates, Brown, Campana and LoPorto. They all knew what my record was for obtaining absentee ballots. I can not stress enough how much they distrusted each other and looked to me to ensure that for every ballot application there was a ballot voted for them.

During the next few weeks I solicited absentee ballot applications in the Public Housing in the City of Troy. I did this with Anthony DeFiglio. Anthony would usually knock on the door and the tenants would answer for him and then I would obtain their signature on the ballot applications. We received approximately thirteen applications between the date of the meeting at LoPorto's and Friday, September 11th, 2009. I can't remember who actually delivered those applications to the Board of Elections. I do remember that I forged those ballots and gave them to Dan Brown along with a couple of others that I had forged for the Democratic Primary. I believe that there may have been sixteen in all. Thirteen from the WFP and three from the Democratic primary. They were all wrapped in a rubber band. I remember when I handed the Ballots to Dan Brown I told him " you should mail these, you

shouldn't hand them all in at once" . I can't say for sure why Dan Brown was the person I gave those ballots to.

On Friday September 11th, 2009 I had telephone conversations with the candidates. We discussed that only about a dozen or so absentee ballots had been completed. It wasn't enough and we all agreed to meet at Griswold Heights on Saturday , September 12th, 2009 to solicit more applications. On Saturday, September 12th, 2009 I met with; John Brown, Dan Brown, Clem Campana, Michael LoPorto, Thomas Aldrich, Gary Galuski, Anthony Defiglio, Kevin McGrath, and Robert Martiniano at Griswold Heights. We separated into groups and began to solicit voters for absentee ballot applications. Kevin Mcgrath told me to send someone up to his district "who know what's going on". As far as I know Dan Brown and Tom Aldrich went to the North end of Troy to solicit. John Brown, Campana, LoPorto, and Martiniano went to North Central. They all stayed together because they didn't trust each other and were keeping an eye on each other. I stayed in Griswold Heights with Anthony DeFiglio and Gary Galuski. At about 4:00 or 5:00pm I had completed soliciting applications. I was at Northway Toyota in Latham, Gary Galuski had given me a ride up there to pick up my car. I received a telephone call from Robert Martiniano. Martiniano told me that John Brown was going to forge signatures. I told Martiniano that "I don't know what John Brown is doing, you're with him." At some time I received a phone call from Kevin McGrath. Kevin wanted to know how many applications we solicited from his

voter district. I told Kevin that I didn't have any idea how many we got from his district.

On Monday, September 14th, 2009 John Brown came to my office at Troy City Hall. We continued going over the applications and the numbers we needed. We compared the names on the registration list to the names on the applications we had solicited. I checked them off and we got a count. We made photocopies of all of the applications and I kept the copies. There is only one reason for us to make photocopies of the applications. Once a ballot is generated we need the copy of the application just in case we are not able to locate the voter to sign the ballot envelope. Should we not be able to locate a specific voter we can then use the application to either trace or copy their signature on the ballot envelope. John was at my office for about twenty minutes or so. John took all of the original applications over to the Board of Elections. I wasn't at the BOE, but it is my understanding that John left the applications with Ed McDonough. Ed called me later in the morning, at around 10:30 or 11:00 and told me that he was going to be bringing the ballots to me at my office. I was pissed off. I asked him "why the fuck are you bringing them to me, my name isn't on them." He said that Brown had left them in his office and told him to deliver them to me. When Ed McDonough delivered the Ballots to my office they were in a manila folder. The envelopes were open with the ballots inside. There were about thirty ballots in the envelope. McDonough and I went over the voter list. McDonough asked "how many do we have". I tallied in the 40's. This number included the ballots that I had given to Dan Brown on Friday

the 11th. I told Ed McDonough that he could probably get Brian Suozzo and Jermaine Joseph as well. I'm sure those two ballots never left the Rensselaer County Board of Elections office. When I say that they never left the Board of Elections office, I mean that applications were made and ballots generated and neither the application or the ballot ever left the BOE for the voter to see. They were forged. I told McDonough that I didn't have time to try to find all of the voters and get signatures on the ballots. I called Michael LoPorto, Clem Campana and John Brown. I told all of them that I wasn't going to get all of the ballot's signed myself and that I wanted them to meet me at Griswold Heights to get them done. I had plans for the evening, I had to cancel my plans, and I told them that if they wanted the WFP line they were going to have to help: I sent Tony Renna to Jackson St. to get the ballots for Joseph Mamone, Michael Mamone, Michelle Zillgit, and Jessica Boomhower signed. Me, Michael LoPorto, and Clem Campana started soliciting for signatures on the ballots. We did not have much success. I can only say for sure that Richard Gushlaw signed a ballot. John Brown arrived at some point while we were knocking on doors. I saw Tony Renna hand the four ballots from Jackson St. to John Brown. I was kind of following them and I heard Tony say to John Brown "do you have to do that in front of everyone." I asked John "what the hell are you doing". I believe that the handwriting in the date field on the four ballot envelopes from Jackson St. is John Brown's, I didn't actually see him complete the ballots. We knocked on some more doors, again without much luck. When we finished trying to get signatures I had the ballots

with me. We went to our cars and as we were all getting ready to leave one of the three, I can't remember which one, said "these are going in right? " I acknowledged the question with the response "I'm not turning them into the BOE" I Michael LoPorto told me that he would take care of it:

On Tuesday, September 15th, 2009 I left the ballots that I had received the previous day from Ed McDonough at my home when I went to work. Sometime around mid morning Michael LoPorto called me and asked me if the Ballots "were done yet". I told him no. In my mind I know that I didn't want to forge that many ballots with that many people involved in the plan. I knew that something was going to go wrong. I kept stalling and hoping that Michael or someone would call and say " give them to me and do it." That never happened. Michael called me again just prior to lunch time and asked me again. I told him no again and said that I was busy at work. I hoped he would ask for them, but he didn't. As the day went on I knew that I was going to have to do them because if I didn't, all three of them would know that I did not do it and I felt I would most likely lose my job. Sometime after getting back to the office from my lunch break I went home and forged the ballots and the ballot envelopes. I didn't want my DNA on them so I dipped my finger in water and wet the envelope seals that way. When I completed them I called Michael LoPorto and told him to meet me at City Hall. I gave the ballots to Michael at City Hall. They were in a manila envelope and he left with them.

On the Morning of the 15th of September I received a telephone call from either Kevin McGrath or John

Brown, I can't be sure who first called. They told me that Bob Mirch and the Deputy Mayor Dan Crawley had been out speaking to the voters who had absentee ballots at the BOE. That was the first indication that there was going to be problems with the election. Later in the day Kevin Mcgrath called me and asked me "how many from my district went in." I told him again that I didn't know.

During the following week Bob Mirch had one of his candidates, Christian Lambertson, initiate a Law suit to invalidate the absentee Ballots for the WFP and to look into the fraud. Ed McDonough came to my office at City Hall. He told me that Bob Mirch had hired a Private Investigation firm to investigate what had happened with the absentee ballots. Ed wanted to talk about a "strategy" to deal with the situation. He suggested going to Bob Mirch and trying to make some kind of deal to make the situation go away. I was not on board with going to Mirch. I told Ed he needed to just tell the truth. Ed told me that he was going to meet with the John Brown and some of the WFP people at LoPorto's later that day. I asked Ed if he really thought that it was a good idea to meet with the WFP. Ed and I met in Waterford the night before the civil hearing. I wanted to stay away from home and work so that I couldn't be served with a subpoena and have to testify in the Civil proceeding. It was some time during that week following the Primary that I decided that I needed to protect myself. I called the District Attorney, Rich McNally. Rich and I became friends during the 2007 election cycle when Rich was running for District Attorney and I was working for Party candidates. I told Rich that I needed to speak

to him, and that I didn't want to talk on the phone. Rich invited me up to his house in Valley Falls. We spoke on his porch. Rich told me that he had recused himself and had requested a Special Prosecutor. I told Rich that I needed a Lawyer who knew Election Law. Rich told me to hire Jim Long before anyone else did. The next day I was in Jim's office and I hired him to represent me. Jim told me to refer any Police that may want to interview me to him.

Once I had an Attorney representing me on the matter things were more quiet for some time. I didn't have much contact, other than City business, with any of the other persons involved in the Ballot Fraud. Sometime after I had heard that Anthony DeFiglio had been interviewed and told what he knew about the Ballot Fraud. I did ask Tony Renna to go and speak to Anthony. I asked Tony to tell Anthony to get a Lawyer and I also told him that we would try to get him some work after the whole Ballot Fraud thing was over. During that same time I received calls from Clement Campana, Michael LoPorto and John Brown. They were all concerned about how much Anthony knew about the Ballot Fraud, and how much he told the State Police. John Brown and his family even got so far as to find Anthony a job in Vermont. I think it was some type of maintenance job at a Motel. I did speak to Ed McDonough on occasions regarding his interviews with the State Police. I told Ed to just tell the truth. Following his first interview with the State Police Ed told me that he had told Inv. Ogden that he had left the ballots "at City Hall". I told Ed that he needed to tell the truth about that because Kevin O'Malley was with him and witnessed everything that happened.

NOTICE

Penal Law § 210.45 — IN A WRITTEN INSTRUMENT, ANY PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE HAS COMMITTED A CRIME UNDER THE LAWS OF THE STATE OF NEW YORK PUNISHABLE AS A CLASS A MISDEMEANOR.

AFFIRMED UNDER PENALTY OF PERJURY

This _____ day of MONTH, 20 ___

OR

SUBSCRIBED AND SWORN TO BEFORE ME

September

This 30 day of MONTH, 20 11

STATEMENT END TIME: _____ ☒ AM ☐ PM

SIGNATURE OF DEPONENT, WILLIAM A. MCINERNEY /s/ William McInerney

/s/ James E. Long
JAMES E. LONG
Notary Public, State of New York
No. 02LO5037605
Qualified in Albany County
Commission Expires Jan. 3, 2015

OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF RENSSELAER
RENSSELAER COUNTY COURTHOUSE
TROY, NEW YORK 12180
(518) 270-4040

RICHARD J. McNALLY, JR.
DISTRICT ATTORNEY

September 24, 2009

Hon. Robert M. Jacon
Rensselaer County Court
Rensselaer County Courthouse
Troy, New York 12180

Re: Request for a Special Prosecutor
Investigation pertaining to Supreme Court
Index No.: 230629
Lambertsen v. Bugbee et al. filed 9-23-09

Dear Judge Jacon:

I am requesting the appointment of a Special District Attorney to prosecute the above-mentioned matter. County Law Section 701 authorizes a superior criminal court to appoint a Special Prosecutor when the District Attorney is disqualified from acting in a particular case to discharge his duties at a term of any court.

This matter involves a civil suit commenced in Supreme Court by the above referenced Plaintiff. Having reviewed the pleadings it appears that a criminal investigation is appropriate. In order to avoid the appearance of impropriety I make this request for a special prosecutor. As such, I am requesting that an appointment be made for all purposes, including investigation, prosecution and disposition.

I, therefore, respectfully request the appointment of a Special Prosecutor in the matter.

Very truly yours,

RICHARD J. McNALLY, JR.
District Attorney

STATE OF NEW YORK
COUNTY COURT
COUNTY OF RENSSELAER

IN THE MATTER OF AN INVESTIGATION PERTAINING TO RENSSELAER COUNTY SUPREME COURT INDEX NO. 230629, CHRISTIAN LAMBERSTEN V. LAWRENCE BUGBEE ET AL.

Filed: 9/28/09

ORDER

In the matter of an investigation pertaining to Rensselaer County Supreme Court Index No. 230629, Christian Lambersten. v. Lawrence Bugbee et al, and the District Attorney, having disqualified himself and his staff from acting in this case based on the speculation of politics and the appearance of impropriety and the court having determined this disqualification is appropriate, it is

ORDERED, that Y. Curtis Smith, Esq., whose address is Smith Hernandez, LLC, Rensselaer Technology Park, 105 Jordan Road, Troy, New York 12180-8376, is to act as Special District Attorney for all purposes in this matter up to and including the disposition of this case pursuant to Section 701(1)(a) of the County Law of the State of New York.

DATED: Troy, New York
September 28, 2009

/s/ Robert M. Jacon
HONORABLE ROBERT M. JACON
RENSSELAER COUNTY COURT JUDGE

STATEMENT

COUNTY OF RENSSELAER
TOWN OF NORTH GREENBUSH

I, KEVIN B. McGRATH, AGE: 39 BORN ON: / /71, AND RESIDING AT: 17 Red Rock Rd, Troy, NY 12182, HAVE BEEN ADVISED BY: Inv. A. W. FANCHER, OF THE NEW YORK STATE POLICE, OF THE FOLLOWING:

I HAVE THE RIGHT TO REMAIN SILENT AND I DO NOT HAVE TO MAKE ANY STATEMENT IF I DON'T WANT TO.

IF I GIVE UP THAT RIGHT, ANYTHING I DO SAY CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW.

I HAVE THE RIGHT TO HAVE A LAWYER PRESENT BEFORE MAKING ANY STATEMENT OR AT ANY TIME DURING THIS STATEMENT.

IF I SHOULD DECIDE THAT I DO WANT A LAWYER AND CANNOT AFFORD TO HIRE ONE, A LAWYER WILL BE APPOINTED FOR ME FREE OF CHARGE AND I MAY HAVE THAT LAWYER PRESENT BEFORE MAKING ANY STATEMENT.

I ALSO UNDERSTAND THAT I HAVE THE RIGHT TO STOP AT ANY TIME DURING THIS STATEMENT AND REMAIN SILENT AND HAVE A LAWYER PRESENT.

I FULLY UNDERSTAND THESE RIGHTS AND AT THIS TIME, I AGREE TO GIVE UP MY RIGHTS AND MAKE THE FOLLOWING STATEMENT;

/s/ Kevin McGrath

WITNESS SIGNATURE

I am here at the office of Attorney Trey Smith with my Attorney Peter Moschetti regarding the Rennselaer County Absentee Ballot investigation. I am speaking with Inv. Albro Fancher and Inv. John Ogden of the New York State Police and I fully understand my rights and make the following statement.

I'm looking at a photocopy of and recognize the absentee ballot application and absentee ballot envelope of THOMAS D. DICKINSON. As I review Mr. DICKINSON's paperwork, I recall Mr. DICKINSON signing his name to the absentee ballot application. I wrote DICKINSON's name and address in the upper left corner along with the name RICK MASON on the deliver to line. When I brought the application to the Board of Elections on 8/24/10, EDWARD McDONOUGH pointed out that the "Dates you will be out of Rensselaer County" and "Where you will be on Election Day" lines were not filled out on the application. I told McDONOUGH that ~~he was a~~ DICKINSON is a screen printer and I watched McDONOUGH fill in the dates and "Screen Printing Conference in Syracuse" on the form. I later saw DICKINSON at Corliss Park and he signed his ballot envelope and gave me his consent to vote Democratic on his ballot which I did.

I am looking at a photocopy of and recognize the absentee ballot application and absentee ballot envelope of JENNIFER M. TAYLOR. As I review Ms. TAYLOR's paperwork, I recall Ms. TAYLOR signing

her name to the absentee ballot application and filling out her name and address in the upper left hand corner. I wrote RICK MASON's name on the deliver to line. When I brought the application to the Board of Elections on 8/24/10, EDWARD McDONOUGH pointed out that the "Dates you will be out of Rensselaer County" and "Where you will be on Election Day" lines were not filled out on her application. I told McDONOUGH that she told me where she would be, but I could not remember where she said. I watched McDONOUGH write in the dates and "visiting family in Massachusetts" on the application. I later saw TAYLOR at Corliss Park and she signed her ballot envelope and gave me her consent to fill out her ballot and vote for myself, which I did.

I'm looking at a photocopy of and recognize the absentee ballot application and absentee ballot envelope of JOHN H. GILBERT Jr. As I review Mr. GILBERT's paperwork, I recall Mr. GILBERT's wife signing his name to the absentee ballot application at their residence. JOHN was embarrassed about his literacy and had his wife sign his name for him. I wrote JOHN's name and address in the upper left hand corner and MIKE LEONARD on the release to line for JOHN. I can't specifically recall who wrote JOHN's date of birth and "South Yarmouth Cape Cod" but that is not my writing. I later returned to JOHN GILBERT's residence and he signed his ballot envelope and gave me his consent to fill out his ballot and vote for myself, which I did. I have known JOHN GILBERT for as many as ten years through playing flag football against him.

I'm looking at a photocopy of and recognize the absentee ballot application and absentee ballot envelope of STEVE CARPENTER. As I review Mr. CARPENTER's paperwork, I recall STEVE CARPENTER signing his name to the absentee ballot application in my presence. I printed the rest of the information on the application which includes STEVE's name and address in the upper left hand corner, my name on the release to line for STEVE and Frost Acres Campground which was where he said he would be. I later saw STEVE and he signed his ballot envelope. I completed the ballot with his direct consent to do so. I then licked the envelope and mailed it to the BOE as I did with all of the ballots. I have known STEVE CARPENTER for 12-15 years as we use to work together at Playtex in Watervliet.

I'm looking at a photocopy of and recognize the absentee ballot application and absentee ballot envelope of LLOYD L. NEWELL. As I review Mr. NEWELL'S paperwork, I recall LLOYD NEWELL signing his name to the absentee ballot application in my presence along with his incorrect (former) address in the upper left hand corner of the form. LLOYD completed everything on the form with the exception of the name TOM ADLRICH which I printed on the release to line. The old address is crossed out on the form and his current address of 829 3rd Ave was later added on the form. I remember asking ED McDONOUGH if LLOYD's correct address could be added as he told me after the fact that his correct address is 829 3rd Ave. I can't say for sure that McDONOUGH was the person who actually made that correction on the application. I later saw LLOYD NEWELL and he and I together

completed the ballot. LLOYD signed the ballot. I then licked the envelope and mailed the ballot to the BOE. I know LLOYD NEWELL because he went to high school with my daughter.

I'm looking at a photocopy of and recognize the absentee ballot application and absentee ballot envelope of JOSEPH M. WILEY. As I review Mr. WILEY's paperwork, I recall being at JOSEPH WILEY's residence and him signing his name to the absentee ballot application and writing that he would be in Lake George. I printed the rest of the information on the application which includes JOSEPH's name and address in the upper left hand corner and MIKE LEONARD on the release to line. I may have written the date next to his signature but can't say for sure. I later saw JOSEPH at his house on 8th Ave and he signed his ballot envelope. I completed the ballot with JOSEPH. I then licked the envelope and mailed it to the BOE.

I'm looking at a photocopy of the absentee ballot of application and absentee ballot envelope of YARELIS GONZALEZ. I spoke with YARELIS prior to the September 2009 primary and helped her fill out a voter registration card. That was the only contact I had with her prior to the September 2009 primary. I did not go to her with an absentee ballot application but her name would have been on a list of friendly's that was present the Saturday prior to the Primary when TOM ALDRICH and DANNY BROWN canvassed Corliss Park.

I'm looking at a photocopy of the absentee ballot application and absentee ballot envelope of MARC W. WELSH. I have known MARC all my life and

grew up with his brother. I did not fill out the application with MARC but did introduce DAN BROWN and TOM ALDRICH to MARC WELSH the Saturday prior to the September Primary. They filled out an application with him at that time. I later saw MARC with his absentee ballot and he signed his ballot envelope. I completed the ballot with MARC with his direct consent because he has trouble writing. I licked the envelope and mailed the ballot to the BOE for MARC.

The above mentioned voters are the voters that I had direct contact with prior to the September 2009 WFP primary in Rensselaer County. The weekend prior to the September 2009 WFP Primary, I believe I was told by MAC (BILL McINERNEY) that there was a meeting at Grizwold Hights on Saturday September 12, 2009 to solicit support and Absentee Ballot Applications for the WFP. That morning, I went to Grizwold Hights where I saw the candidates: JOHN BROWN, ROBERT MARTINIANO, CHAPPY (CLEM CAMPANA), MICHAEL LoPORTO, and GARY GALUSKI. Also there that day were democratic volunteers TOM ALDRICH and TONY DeFIGLIO, DAN BROWN and MAC. That morning, I gave MAC and DAN BROWN a list of friendly's to solicit from my district which is District 1. I told MAC and DAN BROWN to send someone who knew how to fill out the paperwork correctly. DAN BROWN took the list from me and went to District 1 with TOM ALDRICH to solicit the friendly's on my list. A friendly is a voter that is registered to vote and would be supportive of myself, the Democratic Party or a candidate endorsed by the Working Family's Party. After handing off the list, I left as I

had other things to do that day. When I left, everyone was still standing in a circle including DAN BROWN and TOM ALDRICH. The purpose that day was to solicit registered WFP voters for support in the upcoming primary and to offer Absentee Ballot Applications.

Later that day I met with DAN BROWN and TOM ALDRICH at Corliss Park in the afternoon to see what kind of support they got. I believe DAN told me that they had obtained roughly four to six absentee ballot applications that day. I knew that the applications would have had to of come from my friendly list. During this time I introduced them both to MARC WELCH. They did not originally approach MARC because he had a BOB MIRCH sticker on his door. I never took possession of any absentee ballots that day.

On the afternoon of the day prior to the primary, Monday September 14th, 2009, I was at the Board of Elections to verify the number of my friendly absentee ballots to those friendly to the Republicans and BOB MIRCH. I would say this was between 4 pm and 5pm that day after I got out of work. When I went in, JOHN BROWN was in ED McDONOUGH's office at the BOE. I walked into the office. The discussion ED and JOHN were having centered around the need to have names listed on each of the absentee ballot applications which signified who each corresponding ballot could be released to. I took this to mean the release to names were blank on the absentee ballot applications they were speaking about. During this conversation the name of the WFP chairperson JIM WELCH came up as a name that could be entered on the release to line on the

absentee ballot applications. I remember JOHN BROWN having JIM's number and calling him from his cell phone in McDONOUGH's office. I do not recall JOHN ever claiming the number of applications to JIM at he wanted to enter JIM's name on. At this point, it became clear to me that to be able to solicit the actual voters for whom each application was received in order to generate an absentee ballot was an impossible task. I knew from the conversation that McDONOUGH and BROWN were having because there were roughly 35 applications that they were talking about. I do not remember if it was McDONOUGH or BROWN that mentioned the number 35. I had done a lot of work obtaining absentee ballot applications prior to this so I knew it would be difficult to track people down with the actual ballots like I had done. I was not sure who had the applications at that point because I saw them so I told them both to make sure that they didn't mess with the voters from District 1. I specifically mentioned MARC WELCH and told them both that his excuse was that he was a diabetic and had trouble ~~working~~ walking. I knew his application was in the pile because I had seen it on Saturday when I met with DAN BROWN and TOM ALDRICH at Corliss Park. I had also seen ED McDONOUGH fill in the blank excuses on the applications of DICKINSON and TAYLOR back in August.

At that point, ED McDONOUGH told JOHN BROWN and I to leave his office because we were candidates. JOHN and I left and made small talk as we left. When ED McDONOUGH asked JOHN and I to leave, I took that to mean that JIM WELCH's name would be placed on the release to line of the 35

absentee ballot applications that JOHN BROWN and ED McDONOUGH were speaking about that day and he didn't want us there when it happened.

Later that night, I had ~~a~~ called MAC to make sure that the friendly's who were solicited in District 1 actually received their absentee ballots. I made this call because of what I had heard in McDONOUGH's office earlier and my knowledge of the absentee ballot process. MAC told me that 2 or 3 of them were going in. I took that to mean that 2 or 3 voters could not be located to fill out their absentee ballots but that the ballots would be sent into the BOE anyway. I wasn't happy about the votes going in but can't remember what I said to MAC.

I spent the next day, Primary Day, making sure everyone got to the poles and checking numbers at the polls. Everything that day for me was oriented to getting the voters to the polls.

I believe that a day or two later, Wednesday 9/16/09 or Thursday 09/17/09, the news media started reporting on the fraudulent absentee ballots and interviewing voters who had absentee ballots submitted in their names.

At some point after the media became involved, I called ED McDONOUGH and asked him what was going on with the ballots. McDONOUGH said they fucked up. When Ed said ~~they~~ they, I took that to mean MAC, DAN BROWN and JOHN BROWN. I believe that MAC, DAN and JOHN were behind the fraudulent votes. I think ED regretted that it happened and that he didn't stop it. ED could have stopped the whole thing when he asked JOHN BROWN and I to leave his office that Monday prior

to the primary. As the Democratic Commissioner of the BOE, that is his job.

In the following months, everyone involved was being interviewed by the State Police. I had several conversations with ED McDONOUGH during this time period. During one of these conversations, ED McDONOUGH told me that he told Inv. OGDEN that he had personally delivered absentee ballots to MAC's office in Troy City Hall and left them on his desk. It would have had to be after I left ED's office on the afternoon of Monday 9/14/09 but prior to my call to MAC later that night.

At some point after the primary but before the election, I had a conversation with SAHAR COUCH of the state chapter of the WFP. She came up to me after the meet the candidates' night CYO Center. I told her that I did not have anything to do with the fraudulent absentee ballots. I told her I kept my word and was going to give her back her party in Lansingburgh.

I HAVE BEEN ADVISED BY INVESTIGATOR FANCHER THAT GIVING A FALSE WRITTEN STATEMENT IS A CRIME AND THAT I CAN BE ARRESTED FOR MAKING A FALSE WRITTEN STATEMENT. I HAVE READ THIS ENTIRE STATEMENT AND EVERYTHING I HAVE SAID IN THIS STATEMENT IS THE TRUTH TO THE BEST OF MY KNOWLEDGE. (END OF STATEME

NOTICE

(NYS Penal Law Sec. 210.45)

IN A WRITTEN INSTRUMENT, ANY PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE HAS COMMITTED A CRIME UNDER THE LAWS OF THE STATE OF NEW YORK PUNISHABLE AS A CLASS A MISDEMEANOR.

AFFIRMED UNDER PENALTY OF PERJURY
THIS 29th DAY OF March, 2010

SIGNATURE OF DEPONENT
/s/ Kevin McGrath

OR

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 2010

SIGNATURE OF WITNESS

NAME OF PERSON TAKING STATEMENT

STATE OF NEW YORK
SUPREME COURT
COUNTY OF RENSSELAER

THE PEOPLE OF THE STATE OF NEW YORK

-against-

EDWARD McDONOUGH and MICHAEL LOPORTO,

Defendants.

Filed: 3/1/12

Decision & Order

Indictment #SP11-1002
Index #235598

APPEARANCES:

Trey Smith, Esq., Special District Attorney; Matthew C. Hug, Esq., Special District Attorney

Brian D. Premo, Esq., Attorney for Edward McDonough

Michael A. Felt, Esq., Attorney for Michael LoPorto

Pulver, J.

Defendants Edward McDonough ("McDonough") and Michael LoPorto ("LoPorto") (collectively,

"defendants") move in limine to dismiss the indictment or certain counts therein based on alleged prosecutorial misconduct during Grand Jury proceedings.[1] In the alternative, defendants seek a plenary hearing. In addition, during the trial, McDonough sought to have introduced into evidence exhibits marked McDonough's BB, CC, DD; the Court reserved ruling. The People oppose these applications. After first making an oral application for dismissal during a conference outside of the Jury's presence, the Court directed written submissions. Following review of the same, on February 6, 2012, in open court but outside the presence of the Jury, the Court entertained oral argument and now issues its decision and order.

Factual and Procedural Background

In January 2011, a Grand Jury indicted McDonough on 38 counts of Forgery in the Second Degree (Penal Law § 170.10 [2]) and 36 counts of Criminal Possession of a Forged Instrument in the Second Degree (Penal Law § 170.25). In the amended indictment stemming from the same Grand Jury proceeding, LoPorto stands indicted on 29 counts of Criminal Possession of Forged Instrument in the Second Degree (Penal Law § 170.25). As part of the Grand Jury proceedings, the Special District Attorney ("SDA") presented certain affidavits executed by witnesses pursuant to CPL 190.30 (3)[2]

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[1] At the oral argument, LoPorto sought, alternatively, disqualification of the SDA.

[2] CPL 190.30 (3) allows an affidavit to be submitted to the grand jury in lieu of testimony where forgery is involved and where such statement (affidavit) is given under oath.

("190.30 affidavit") to the Grand Jury. During this criminal trial, two witnesses, Jermaine Joseph and Jolene VanVranken, denied that they signed such affidavits while other witnesses acknowledged executing the 190.30 affidavits.

As to Ms. VanVranken, McDonough sought to introduce into evidence the following three exhibits regarding Ms. VanVranken: (1) marked McDonough's BB, consists of her signature as provided by her on the witness stand during cross examination; (2) marked McDonough's CC, consists of her "Supporting Deposition" given to the State Police on December 2, 2009; and (3), marked McDonough's DD, is a copy of her 190.30 affidavit. McDonough sought introduction of these exhibits to demonstrate that the signature on Ms. VanVranken's 190.30 affidavit varies from her signature on her statement to the police, which she acknowledged as hers, and her signature given at the trial. The People objected on relevancy grounds. The Court reserved decision.

Earlier, as part of their omnibus motions, defendants moved to dismiss the indictment, inter alia, on grounds of prosecutorial misconduct and insufficient evidence, relying, in part, on CPL 210.35 (5) and in further motions sought to have the SDA disqualified, in part, on grounds alleging conduct on his part. The Court denied those motions. In essence, defendants' joint motion now is a renewal of those prior motions based, in part, on the new information discussed above that has come to light during the trial. The Court will entertain this motion to the extent discussed below.

Dismissal Motion

Defendants contend that the indictment should be dismissed due to prosecutorial misconduct during the Grand Jury proceedings that has impaired the integrity of those proceedings and prejudiced defendants: Pursuant to CPL 210.20 (1) (c), a court may dismiss an indictment or any count thereof, inter alia, on the ground that the grand jury proceedings were defective within the meaning of CPL 210.35.

CPL 210.35 (5) provides that a grand jury proceeding is defective when "otherwise fails to conform to the requirements of article [190] to such degree that the integrity thereof is impaired and prejudice to the defendant may result" (CPL 210.35 [5]). In interpreting this provision, the Court of Appeals has held:

> Dismissal of indictments under CPL 210.35 (5) should thus be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury. The likelihood of prejudice turns on the particular facts of each case, including the weight and nature of the admissible proof adduced to support the indictment and the degree of inappropriate prosecutorial influence or bias

(People v Huston, 88 NY2d 400, 409; see People v Moffitt, 20 AD3d 687, 688, lv denied 5 NY3d 854; People v D'Amico, 261 AD2d 633, lv denied 93 NY2d 1016). Further, "the question whether a particular presentment was so improper as to impair the

integrity of the Grand Jury proceeding and to create the potential for prejudice has always been treated as a question of law" (People v Adessa, 89 NY2d 677, 685).

Defendants base their argument for dismissal on the SDA's alleged: (1) submission of 190.30 affidavits to the Grand Jury that were forged, (2) failure to properly swear in the affiants during the execution of the 190.30 affidavits, and (3) lack of authority to administer an oath to the 190.30 affiants. Defendants maintain that such conduct violates their due process rights. The SDA denies such allegations.

Alleged Forgeries

Defendants contend that the 190.30 affidavits of the following persons have been forged: (1) Jermaine Joseph, (2) Jolene VanVranken; (3) Demetrius Banks; (4) Jessica Boomhower; (5) Lisa Chum; (6) Michael Rebel, and (7) Barton Ward. Defendants submit various exhibits in an attempt to show that the signatures on the 190.30 affidavits for these individuals differs from their signatures on, Inter alia, their voter registration cards. Defendants suggest that the SDA either forged the affidavits or notarized them outside of the presence of the witnesses.

First, the Court notes that, as to the 190.30 affidavits of Jermaine Joseph, Demetrius Banks, Jessica Boomhower, and Lisa Chum, such are not at issue in this matter since they were never submitted to the Grand Jury as these voters testified in front of that panel. With regard to Ms. VanVranken, while she denied that she executed the 190.30 affidavit during her cross examination, comparison of that

document with her voter registration card, which she affirmatively testified that she had signed, reveals that the signatures are very similar. Also, her signature on page two her State Police statement, which she testified she signed, is similar to her signature on the 190.30 affidavit. Further, review of the other witnesses' disputed signatures on the 190.30 affidavits in comparison with voter registration cards does not reveal such discrepancies between these documents at to warrant further inquiry.[3]

Furthermore, the SDA swore before the Court that he did not "forge" or execute any affidavit in place of any witness. In addition, the SDA at oral argument and in his affirmation has painstakingly explained the procedure he implemented in having witnesses execute 190.30 affidavits, For instance, the SDA explained that he asked the affiants to review each prepared affidavit, including the attached documents, as the affidavit was going to be a sworn document, and "by signing [the affiants] would be swearing that all of that was true to the best of their knowledge." He further noted that he then individually spoke with each affiant, witnessed the individual sign the document, and affixed his notary stamp on the document in front of the affiant. Given this testimony and the exhibits presented by the parties, the Court rejects defendant's argument premised on prosecutorial misconduct regarding alleged forgery of witness 190.30 affidavits to

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[3] During cross-examinations of voter witnesses, the Court allowed defendants to explore circumstances surrounding the execution of 190.30 affidavits.

warrant the exceptional remedy of dismissal of the indictment or any specific counts therein or, alternatively, disqualification of the SDA (see People v Davis, 83 AD3d 1210, 1211-1212, lv denied 17 NY3d 794; People v Bean, 66 AD3d 1386, 1386, lv denied 14 NY3d 769; People v D'Amico, 261 AD2d at 634). Moreover, Grand Jury proceedings enjoy a presumption of regularity, which has not been overcome here (see People v Nash, 69 AD3d 1113, 1114-1115, lv denied 15 NY3d 754).

Oath

Defendants also contend that the SDA failed to swear in the witnesses, which amounts to misconduct on his part affecting both the integrity of this proceeding and the sufficiency of evidence underpinning the indictment. As noted earlier, CPL 190.30 (3) allows an affidavit to be submitted to the grand jury in lieu of testimony where forgery is involved and where such statement (affidavit) is given under oath. "Oath" is defined by CPL 1.20 (38) to "include an affirmation and every other mode authorized by law of attesting to the truth of that which is stated" (see also Penal Law § 210.00 [1]; General Construction Law § 36). Furthermore, "the form of an oath is flexible and is deemed sufficient so long as it is calculated to awaken the conscience and impress the mind of the person taking it in accordance with his or her or religious or ethical beliefs" (People v Wilson, 255 AD2d 612, 613, lv denied 93 NY2d 981; see Matter of Breanna M., 23 Misc 3d 341, 343; CPLR 2309 [b]), Furthermore, an oath is "designed to serve two discrete functions: to alert the witness to the moral duty to testify truthfully and to deter false testimony by

establishing a legal basis for a perjury prosecution" (People v Parks, 41 NY2d 36, 45; see also Matter of Breanna M., 23 Misc 3d at 343; People v Penaflorida, 2011 NY Slip Op 21385 at ***3-5).

Here, after hearing argument on this issue and reviewing the parties' submissions, the Court is satisfied that the witnesses executing the 190.30 affidavits were properly sworn (accord People v Holmes, 93 NY2d 889, 891; People v Chasey, 5 AD3d 815, 816, lv denied 2 NY3d 787; cf Matter of Neftali D., 85 NY2d 631, 636). In particular, the SDA noted both at oral argument and in his affirmation that he explained the significance of the document that was being signed, that by signing the document the witnesses was attesting to the truth of the same, and that there were legal consequences for not telling the truth in the affidavit. Accordingly, the Court rejects this argument as a basis to dismiss the indictment. Further, the Court finds unavailing defendants' assertions that the SDA or his staff was coaching a witness or witnesses to testify that they had been administered an oath prior to executing the 1903.0 affidavit, which the witness unequivocally testified that she signed.

As to defendants' argument that the SDA lacks authority to administer an oath, the Court agrees with the People that this branch of the motion is untimely (see CPL 255.20) since defendants have been in possession of the 190.30 affidavits for at least a year that reflected that the SDA had notarized the majority of them and never moved for dismissal on this basis (see People v Peryea, 68 AD3d 1144, 1146, lv denied 14 NY3d 804; People v Crockett, 30 AD3d 768, 769-770, lv denied 7 NY3d 866; People v Selby,

53 AD2d 878, 878, affd 43 NY2d 791). In any event, the Court rejects this argument on the merits (see Executive Law § 135; see also Penal Law § 210.00 [6]; People v Penaflorida, 2011 NY Slip Op 21385 at ***3). Furthermore, nothing here suggests that the SDA has an interest in this litigation to prevent him from administering such an oath (see generally Matter of Harte v Kaplan, 87 AD3d 813, 814; Brodsky v Board of Mgrs., 1 Misc 3d 591, 596-597).

Admission of Evidence

McDonough seeks admissions of exhibits marked McDonough's BB, CC, and DD. He contends that such evidence should be admitted as it is relevant to the issues in this case as discussed above. The People object to this evidence, arguing it is not relevant to the trial issues — namely, whether McDonough and LoPorto are guilty of the charges in the amended indictment The Court agrees with the People (see People v Aska, 91 NY2d 979, 981-982; People v Scarola, 71 NY2d 769, 777]) especially in light of the Court's determination on defendants' dismissal application. Further, even if such evidence could be considered somehow relevant, the probative value of such evidence would be outweighed by its potential to lead to jury confusion in a case that already requires a determination on over 70 counts and the weighing of testimony of over 50 witnesses (see People v. Scarola, 71 NY2d at 777). Accordingly, the Court denies admission of McDonough's exhibits marked BB, CC, and DD.

Conclusion

In sum, the Court denies defendants' applications in their entirety. The foregoing constitutes the decision and order of this Court.

Dated: ~~February~~ March 1st, 2012
Troy, New York

/s/ George J. Pulver, Jr.
HON. GEORGE J. PULVER, JR.
Acting Supreme Court Justice

GEN-4 (03\05)
New York State Police
SUPPORTING DEPOSITION (CPL § 100.20)
PAGE ___ OF ___

THE PEOPLE OF THE STATE OF NEW YORK
— VS.

_____

_____

DEFENDANT(S)

LOCATION OF INCIDENT:
STATE OF NEW YORK LOCAL COURT
COUNTY OF RENSSELAER
CITY OF TROY

LOCATION OF DEPOSITION:
STATE OF NEW YORK
COUNTY OF RENSSELAER
CITY OF TROY

On [DATE: 12/02/2009] at [TIME STARTED: 2:20 PM] I, [FULL NAME: Jolene M. Van Vranken, / /75] state the following: I am speaking to Inv. John Owen of the New York State Police. I currently reside at 14 Lockwoods Road, in the Town of Pittstown, Rensselaer County. I have lived here since this past June. I moved here from 510 Griswold Heights in the City of Troy.

Approximately a year & a half ago I was asked by a friend to register with the Working Families Party in the City. I did register with them as a favor. That was the first time I registered with any ~~party~~ political party. I was asked to vote for a candidate. The only time I ever voted was in the Fall of 2008. I have never voted other than that. Inv. Ogden has asked me if I was ever approached & asked to complete an application for an absentee ballot regarding the Troy City Council elections or if I ever completed an absentee ballot for any election in Troy & specifically for the WFP Primary this past September. I would like to say that since I moved out of Troy in June I have not lived at the address of 510 Griswold Heights. Since then, I have never asked for, or completed an absentee ballot application, and I have never completed an absentee ballot. If there is an absentee ballot application or ballot in my name in possession of the Board of Elections or the State Police regarding the WFP primary this past September they are both forged without my consent. I gave no person license or privilege to use my name or to sign my name to <u>any</u> election document.

I have read the notice on this deposition. I do understand it & I swear that this is a true statement. End.

<u>/s/ Jolene M. Van Vranken</u>

Statement ends @ 2:37 PM

NYSP Twp "C"

SP Brunswick

NOTICE

(Penal Law § 210.45)

In a written instrument, any person who knowingly makes a false statement, which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

This 2nd day of December, 2009

-OR-

* Subscribed and Sworn to before me this ___ day of _____, ___

/s/ Jolene M. Van Vranken
(SIGNATURE OF DEPONENT)

/s/ [ ] Van Vranken
(WITNESS)

Inv. John J. Ogden

TIME ENDED: 2:37 pm

STATE OF NEW YORK
SUPREME COURT
COUNTY OF RENSSELAER

THE PEOPLE OF THE STATE OF NEW YORK

-against-

EDWARD MC DONOUGH and MICHAEL LO PORTO,

Defendants.

Indictment #SP11-1002

TRIAL TESTIMONY OF JOLENE VAN VRANKEN

County Courthouse
Congress and Second Streets
Troy, New York 12180
January 31, 2012.

Before:

HONORABLE GEORGE J. PULVER, JR.,
Acting Supreme Court Justice.

Appearances:

For the People:
TREY SMITH, ESQ., Special District Attorney,
Rensselaer County, and MATTHEW C. HUG, ESQ.
Special Assistant District Attorney,

105 Jordan Road
Troy, New York.

For Defendant McDonough:
BRIAN D. PREMO, ESQ.
20 Corporate Woods Boulevard
Albany, New York.

For Defendant LoPorto:
MICHAEL A. FEIT, ESQ.
383 Clinton Avenue
Albany, New York.

EDWARD MC DONOUGH, Defendant, in person.
MICHAEL LO PORTO, Defendant, in person.

JOLENE VAN VRANKEN, after first having been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: This sworn witness is Jolene, J-O-L-E-N-E, VanVranken, V-A-N-V-R-A-N-K-E-N.

THE COURT: All right, sir, your witness.

DIRECT EXAMINATION

BY MR. HUG:

Q. Good morning, Ms. VanVranken. Could you please state your name for the jury?

A. Jolene VanVranken.

Q. Ms. VanVranken, where do you live?

A. I live in Pittstown, New York.

Q. In September, 2009, did you live in the City of Troy?

A. No.

Q. Do you know when you moved out of the City of Troy?

A. In the summer of 2009, June.

Q. Okay. Ma'am, are you registered to vote? Were you registered to vote in 2009?

A. I was registered, yes.

Q. Do you remember when you registered?

A. In 2008.

MR. HUG: Your Honor, I would like to admit People's Exhibit 127 on the stipulation of the parties as the certified voting registration form of Ms. VanVranken.

THE COURT: So admitted subject to marking.

Q. Ms. VanVranken, can you flip to the second page of that document? Is that the voter registration card for 2008?

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. Is that your signature at the bottom?

A. Yes.

Q. Did you mark which party you wanted to join?

A. Yes.

Q. Which party was that?

A. Working Families Party.

Q. Could you briefly tell me how it was that you came to be registered to vote?

A. Um, I was working at the Hoosick Street Hess Mart. I had been working there for several years, and Bob Mirch had asked me to -- he asked me if I was registered to vote; I said no. He asked me if I could vote for one of his candidates, and I said yes.

Q. How did you know Mr. Mirch?

A. He was a regular into the store and also was a friend of the owners.

Q. Aside from this business relationship, did you have any other relationship with Mr. Mirch?

A. No.

Q. Were you politically active?

A. No.

Q. After you signed that, did he take the voter registration form from you?

A. Yes.

Q. In that election of 2008, did you vote?

A. Yes.

Q. Did you vote by absentee ballot?

A. No. I went to Carroll Hill School and voted.

Q. Did you go to the polls?

A. Yes.

Q. Went into the booth and pulled the lever?

A. Yes.

Q. And then beginning of summer of 2009, you moved out of Griswold Heights?

A. Yes.

MR. HUG: Your Honor, may I approach?

THE COURT: Yes, you may.

MR. HUG: At this time, the People would admit People's Exhibit 128A, on stipulation of the parties, a colored copy of the absentee ballot application submitted in the name of Jolene VanVranken.

THE COURT: It may be so admitted subject to marking.

Q. Ms. VanVranken, did you ever receive this application?

A. No.

Q. Did anyone ever come to you in Pittstown and ask you to sign an absentee ballot application so you could vote in a Troy election?

A. No.

Q. Do you see the handwriting at the top of that form?

A. Yes.

Q. Do you see your name?

A. I do.

Q. What address is it?

A. 510 Griswold Heights, Troy, New York, 12180.

Q. Was that your address in September of 2009?

A. No.

Q. Is that your proper birth date; _____, 1975?

A. Yes.

Q. Do you see that there's some red initials there at the top of the form?

A. Yes.

Q. Could you say what those initials are?

A. OTC with a P underneath it.

Q. Do you know what that means?

A. No.

Q. Do you see the name of Brant Caird as the deliver to person?

A. Uh-huh.

Q. On the ballot?

A. Yes.

Q. Do you know Brant Caird?

A. No.

Q. Did you direct anybody to fill that in for you?

A. No.

Q. To deliver that ballot in Troy to Brant Caird?

A. No.

Q. Do you see the next section, where it says you are going to be absent from Rensselaer County because of temporary illness because of knee surgery?

A. Yes.

Q. Did you have knee surgery?

A. No.

Q. Did you ever have knee surgery?

A. No.

Q. Did you write knee surgery on there?

A. No.

Q. Did you direct anyone to do that for you?

A. No.

Q. Do you see the signature that's purported to be yours at the bottom of the document?

A. Yes.

Q. Is that your signature?

A. No.

Q. Does it look like your signature?

A. No, not even close.

Q. Did you direct anybody to sign this on your behalf?

A. No.

Q. And the date there, 9/12/09, did you write that?

A. No.

Q. Did you direct anybody to write that for you?

A. No.

MR. HUG: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

MR. HUG: The People would like to admit People's Exhibit 129A on the stipulation of the parties. It is a four-page document, a colored photocopy of the absentee ballot envelope and absentee ballot submitted in the name of Jolene VanVranken.

THE COURT: Such may be admitted subject to marking.

Q. Ms. VanVranken, first page of that document, set of documents is the front of an envelope; is it not?

A. Yes.

Q. Have you ever seen that envelope?

A. No.

Q. You didn't receive that in the mail?

A. No.

Q. Do you see the computer printout at the top of that envelope?

A. Yes.

Q. Do you see your name?

A. Yes.

Q. What address do you see?

A. 510 Griswold Heights, Troy, New York, 12180.

Q. Was that your addr[illegible] in September of 2009?

A. No.

Q. Do you see any postage on that envelope?

A. No.

Q. Do you see a received stamp, a date and time stamp there from the Rensselaer County Board of Elections?

A. Yes.

Q. And is it September 15, 2009, at 3:07 p.m.?

A. Yes.

Q. Did you deliver that -- did you hand deliver that to the Board of Elections?

A. No. I don't even know where that is.

Q. You don't know where the Board of Elections is?

A. No.

Q. Could you go to the second page, please? Do you see the back of the envelope?

A. Yes.

Q. Do you see a date written down at the bottom?

A. Yes, September 14, 2009.

Q. Did you write that at the bottom?

A. No.

Q. Did you direct anybody to write it for you?

A. No.

Q. Do you see your signature on the other form?

A. That's not my signature.

Q. Does it look like yours?

A. No.

O. Did you direct anybody to write it for you?

A. No.

Q. Can I have you skip over Page 3? Go to the last page. Do you see a ballot, a paper ballot?

A. Uh-huh.

Q. And that's for the primary election on September 15, 2009?

A. That's what it says.

Q. Do you see a box there at the far right? It says, "Working Families, 36th Election District, city, town." It says Troy?

A. Yes.

Q. And you never received this at all?

A. No.

Q. And do you see that there's a bar there, a list of names of candidates with little boxes that you can mark, you know, candidates of your choosing?

A. Yes.

Q. Did you mark this?

A. No.

Q. Did you direct anybody to mark this?

A. No.

Q. Did you intend at any time to vote in the City of Troy for Michael LoPorto, John Brown or Clem Campana?

A. I don't know who they are.

MR. HUG: Thank you. I have no further questions.

CROSS-EXAMINATION

BY MR. PREMO:

Q. Good afternoon.

A. Hello.

Q. Ms. VanVranken, my name is Brian Premo. We have never met before; have we?

A. No.

Q. How old are you?

A. I will be 37 in February.

Q. Back in 2007, was your handwriting the same as it is today?

A. Yes.

Q. Back in 2009, was your handwriting the same as it is today?

* * *